Supreme Court, U.S.
FILED

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Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Joint Petition - Conforming to Rule 12.4 Rule,14 & Rule 20.1

Petitioner - Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
Tel. (845) 426 2902

49PP

QUESTIONS PRESENTED

1 Do Common Law Decisions and Rules "invalidate, vitiate and \ or supersede U. S. Constitution and Laws of United States" ? The answer must be "NO".

A If not, then "Judicially created Immunity or Privilege" for *any person* [under ANY principle, vehicle or name], to be accountable in Civil litigations; that is not *conforming or pursuant* to or *supported by* any U. S. statutes or any provisions of the United States Constitution, *be declared Unconstitutional.*

B Do the "state law" and \ or "Common law" concepts such as Collateral Estoppel, Issue Preclusion or Claim Preclusion used in "Rooker Feldman"doctrine [developed and arising out of State Law or Regulation] or common law; when applied to litigant's Civil Claims under Federal Statutes, violate the U. S. Constitution ?

C Would this Court accept to conclusively resolve the question, this Court has left open in Juidice v Vail 430 US 327 Fn 13; [that was not conclusively resolved in Huffman v Pursue Ltd 420 US 592] that the principle of Federal Court's "non-intervention" stated in Younger v Harris 401 US 37 [perhaps applicable to criminal cases] does not apply to Civil Proceedings, in the Federal Courts ?

2 Since the U. S. Constitution

A vests "Judicial Authority in the Judicial Branch"

B and "*such vesting*" is limited to [or the authority is vested in] the "Federal Judges only"

C and that "Judicial Authority cannot be *delegated* "

D and that a "signature" on a documents represents the identity, authenticity and *facially* demonstrates [or leads one to believe in] the authority of *the person*, signing a document [in this case the Judicial document emanating from a Federal Court];

a) Then why any litigant must accept and be bound by any written "decision or order issued in the name of a Federal Court", that is not signed by the "Judge(s) Of The Court" [but is signed by Clerk(s)] and treat such "decision", to have been reached and issued by a "Constitutional Judicial Authority" and AS NOT OFFENSIVE to the U. S. Constitution ? AND

b) Whether personnel employed by the Court Of Appeals in the Second Circuit have "unquestioned unlimited authority" to take "any action, such person chooses" in the name of the Court Of Appeals, that is beyond the purview and in violation of the U. S. Laws ?

3 During the enactment of and the subsequent amendment to the Civil Rights statutes [such as 42 USCS 1981, 42 USCS 1983 and 42 USCS 1985], have the U. S. Congress expressly declared that, *only claims arising out of "common law negligence"* , are compensable and that CLAIMS of any other nature, such as " an action based upon Fraud", causing

damages to claimant's are, untenable, prohibited or *barred*, under the above Civil Rights statutes ?

A Then under such circumstances, why is it not proper, to file "an action based upon Fraud"; upon defendant's engaging in Frauds and Conspiracies, causing violation of a person's rights under the 14th Amendment of the U. S. Constitution, during a state Court proceeding, where the Federal defendant counsels [in this action], themselves, were not parties to those actions ?

4 In view of the fact, U. S. Congress has remained silent while passing and amending the Civil Rights statutes [such as 42 USCS 1981, 42 USCS 1983 and 42 USCS 1985] as to application of " *Time [statute of] limitations"*-to file claims for Civil Damages, upon their violations:

A and the U. S. Supreme Court has consistently applied *forum state statutes* for resolutions for determination and application of time limitations; while applying Federal Statutes, for controversies under review, upon finding, that, U. S. Congress has not enacted "statutory time limitations", in those statutes, to be applied;

B then, under such circumstances, why is it not proper to borrow and apply provisions from N. Y. State Statutes [or in case in other states, their "similar" statutes], for application of time limitations, under NY State CPLR 213;

C then, under such circumstances, why is it not proper to borrow and apply provisions from N. Y. State Statutes, for determination and application of time limitations, under NY State CPLR 213, *subdivision 1* [applicable "where statutes of limitation is not specified"];

D under such circumstances, why is it not proper to file "an action based upon Fraud" under *subdivision 8* of NYS CPLR 213, causing damages to a litigant or claimant?

5 Do the RICO statutes 18 USCS 1961 *et seq.* [18 USCS 1962 *et seq. And* 18 USCS 1964 *et seq. inclusive] limit* their applications to "Commercial Injury" only and that an individual like this Petitioner cannot claim, any claims for Civil Damages, TO HIS RIGHTS [including any property], in any Court ?

6 Do the RICO statute *require, that the defendant(s) facing a Civil Proceedings must have* violated *each and every element of* 18 USCS 1962 (a),(b) **and** (c) for a plaintiff to successfully prosecute a viable Civil damage claim, under RICO ?

7 Have the U. S. Congress expressly stated or declared that, the defendants must have violated each and every section [to wit] (a),(b) **and** (c) of 18 USCS 1962; before any claims under RICO can be made or that such allegation(s) is(are) required to be made [that the defendants have violated each and every section of 18 USCS 1962] by a claimant, to succeed in his action at law, while pursuing Civil damages under RICO ?

8 Have the U. S. Congress expressly stated or declared that, claims under the RICO statutes [18 USCS 1961 *et seq.*; 18 USCS 1962 *et seq.; and* 18 USCS 1964 *et seq.*] can be filed for *negligence only* and that, claims arising out of the defendant's engaging in Fraud(s) RICO damages, are not tenable under Rico Statutes ?

9 Have the U. S. Congress expressly stated or declared that, claims under the RICO statutes [18 USCS 1961 *et seq.*; 18 USCS 1962 *et seq.; and* 18 USCS 1964 *et seq.*] can be filed only if the defendant has perpetrated two acts against the same plaintiff or victim or that two acts, perpetrated [against different persons] can qualify, for claims against one defendant ?

10 In view of the fact, U. S. Congress has remained silent while passing the RICO statutes and has not deemed necessary to amend "RICO" statutes, since their passage, *as far as determination or application of "time limitations" are concerned*; [18 USCS 1961 *et seq.*; 18 USCS 1962 *et seq.; and* 18 USCS 1964 *et seq.*] to file claims for Civil Damages, upon defendant's violating the statutes:

A and the U. S. Supreme Court has consistently applied *forum state statutes* for resolutions of application of time limitations and or borrowed from other Federal Statutes; while applying Federal Statutes, to controversies under review, wherein U. S. Congress has not enacted "statutory time limitations", in those statutes, to be applied;

B under such circumstances, why is it not proper to borrow and apply provisions from N. Y.

State Statutes [or in case in other states, their "similar" statutes], for application of time limitations, provided for under NY State CPLR 213;

C under such circumstances, why is it not proper to borrow and apply provisions from N. Y. State Statutes, for determination and application of time limitations, under NY State CPLR 213, *subdivision 1* [where statutes of limitation is not specified]

D under such circumstances, why is it not proper to file "an action based upon Fraud" under *subdivision 8 of NYS CPLR 213*, causing damages to a litigant or claimant?

11 Does any hearing, that is not meaningful, that is not full and fair; that is in violations of several U. S. statutes, the U. S. Constitution; that is ignorant of and inconsistent with the holdings and \ or rulings of the U. S. Supreme Court; is in violations of several N. Y. State statutes and the N. Y. State Constitution, that is ignorant of and inconsistent with the holdings and \ or rulings of the N. Y. State's Highest Court; that is superficial, perfunctory, a *make believe* process [*window dressing*] proceeding in a Federal Court, sufficient to meet the requirements of Due Process under the Fifth Amendment of the U. S. Constitution ?

12 Does any hearing, that is not meaningful, that is not full and fair; that is in violations of several N. Y. State statutes and the N. Y. State Constitution; that is ignorant of and inconsistent with the holdings and \ or

rulings of the N. Y. State's Highest Court, that is in violations of several U. S. statutes and the U. S. Constitution; that is ignorant of and inconsistent with the holdings and \ or rulings of the U. S. Supreme Court, that is a superficial, perfunctory, *or is a make believe* process [*window dressing*] or proceeding in a State Court, sufficient to meet the requirements of Due Process and Equal Protection clause under the Fourteenth Amendment of the U. S. Constitution ?

13 In view of the fact, Federal Courts [that means Federal Judges only] have Constitutional mandate and *affirmative duty* to enforce laws of the land; and U. S. Supreme Court establishes the Principles, Rules and Procedures for adjudicating Civil litigations in Federal Courts, that the lower Federal Courts are required to follow;

A Is it not correct to consider and accept, that, every Federal Court Judge has *affirmative duty* to "interpret" the Federal Law, within the Framework establish by the U. S. Supreme Court and the U. S. Constitution ?

B Is it proper for any Federal Court Judge(s) to ignore U. S. Constitutional Provisions, U. S. Laws; Decisions, Rulings of the U. S. Supreme Court; Principles, Rules and Procedures *"established"* by the U. S. Supreme Court and railroad any litigants;

C Is it proper for any Federal Court Judge(s), to refuse and fail to "enforce" the laws of the land, upon litigant's invoking Federal Court's

jurisdiction ?

D Is it proper for any Federal Court Judge(s) to refuse to take judicial notice [even when a litigant specifically requests to *"do so"* and when it is statutorily mandated] of the State & Federal Statutes, the N. Y. State and U. S. Constitution;

1 and abide by the decisions of the United States Supreme Court,
2 of the N. Y. States Courts decision and interpretation of the N. Y. State Laws and the N. Y. State Constitution ?

E Is it proper for any Federal Court Judge to offensively apply, misconstrue or abuse the U. S. Statutes and *under guise of administering justice*; direct improper, hostile and prejudicial remarks or acts, towards any litigant and particularly against a Pro Se litigant in a Federal Court Judicial Proceeding ?

F Is it proper for any Federal Court (either a District Court or Appellate Court) Judge(s) to misstate, misconstrue "litigant's record"; fail and refuse to accurately *refer* to the record in the Federal Court's written decisions and orders and thereby mislead the *"superior reviewing authority as to the litigant's record"*, resulting in absolute miscarriage of justice ?

14 Why this Pro Se litigant:

A should accept and treat the proceedings as *Full and Fair, meaningful, equitable, without prejudice and hostility as well as economical*;

B should not consider the proceedings heretofore as *imposing, oppressive, prejudicial, hostile and burdensome;* in violation of and depriving him the protection of the Sixth, Eighth and the Thirteenth Amendments of the United States Constitution;

C should not treat the proceedings in lower Federal Courts, in fact being unconstitutional ?

D and therefore, should not call the proceedings, he has undergone, in the lower Federal Courts as totally discriminatory, depriving him of *"the due process"* guaranteed by the Fifth Amendment of the U. S. Constitution;

E and therefore, treat the imposition of burden in the Lower Court Proceedings causing tremendous drain on my resources as violative of "unreasonable and unusual punishment", prohibited by the Eighth Amendment

F and "oppression and deprivation of my rights" in the Lower Court as violative of prohibition under the Thirteenth Amendment ?

Complete Title Of The Cases

Case No. 1... CA2NY Docket No. 00-7090

Ashok Kashelkar Plaintiff-Petitioner

v

Bruce Muldoon; Harold Y. MacCartney, Jr; MacCartney, MacCartney, Kerrigan &MacCartney, Debora J. Dillon, William R. Watson; O'Connor, McGuiness, Conte, Doyle, Olsen & Collins; John Doe No. 1; Jane Doe No. 1; John Do No 2, Jane Doe No. 2

Defendants-Respondents

Case No. 2 CA2NY Docket No. 00-7751

Ashok Kashelkar Plaintiff-Petitioner

v

Rubin & Rothman, Joseph Latona, Robin Long, Keith Rothman, Scott Rumph, Household Bank F. S. B. ; Household International, Inc.; Household Recovery Services; John Doe No. 1; Jane Doe No. 1; John Do No 2, Jane Doe No. 2

Defendants-Respondents

List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

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Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

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Rule 14.1(d).... The Court Of Appeals Docket Numbers

Case No. 1 CA2NY Docket No. 00-7090

Ashok Kashelkar
Petitioner
-against-

Harold Y. MacCartney, Jr et al
Respondents

Case No. 2

ASHOK KASHELKAR CA2NY Docket No. 00-7751

Petitioner
-against-

RUBIN & ROTHMAN ; et al

Respondents

Petitioner's statement

This statement is offered, in response to requirements under Rule 14.1(e), Rule 14.1(g) and 14.1(h)

Ashok Kashelkar, petitioner herein respectfully states, that, this is a "complex litigation" and I am presenting this Joint Petition for two cases.

I have taken considerable pain, have made a lot of efforts to comply with all the applicable rules and of course have spent a great deal of money and time, to put together, this Joint Petition, under Rule 12.4.

The accompanying Appendixes offer extensive support material and I have offered and presented my arguments in best possible manner. Simplification would require considerable more space and I find it very difficult to make it fit within the available space.

May I respectfully request that this Petition may please be accepted.

Respectfully submitted,

Ashok Kashelkar.... Pro Se Petitioner
6 Innington Court, Spring Valley NY 10977
Tel (845) 426 2902

Jurisdictional Statement,
conforming to Rule 14.1.(e)(i)

This Petition is filed, pursuant to Supreme Court Rule 12.4 [on account of similar issues presented in the underlying lower Court proceedings], for the two cases, this Petitioner filed in the District Court of Southern District of New York [DC-SDNY or DC] and then appealed them to the Court of Appeals for the Second Circuit.

This petition respectfully seeks leave of this Court's esteemed consideration, pursuant to Rule 10(a), by *invoking* this Court's "supervisory power", on account of the fact the lowers Court have decided my case-consisting of several important Federal Questions-by departing from the accepted and usual course of judicial proceeding [contrary to several decisions and holdings of this Court-of the last 200 years] and in doing so, gravely violated my Constitutional rights.

The Court Of Appeals [CA2NY] also sanctioned "extreme departures" by the DC-, in it's proceedings; by ignoring the serious infractions, in the DC proceedings, notwithstanding every attempt, I made to seek Constitutionally acceptable decisions, from the CA2NY.

I made "unusual requests" to the CA2NY [as seen in [Appendix C Pages 41, 47 and Appendix B Page 52] for CA2NY to "certify questions" to this Court, pursuant to this Court's Rule 19. My requests have been denied [Appendix B Pg 52 and Appendix B Pg 18-20].

Your Petitioner respectfully seeks leave, to *invoke* this Court's jurisdiction, for "extraordinary writ", subject to U. S. Supreme Court Rule 20.1 and pursuant to 28 USCS 1651(a) on account of the fact, I have raised several "specific"

questions [as can be seen in Appendix D-Pg 19-21 and E-Pg 31-33] in lower Court [Appellate] proceedings, which the CA2NY left "untouched" and therefore, issuance of an "extraordinary writ" will be in aid of the Court's appellate jurisdiction.

The *"exceptional and unusual circumstances"* are reflected in Appendix C. Such highly unusual circumstances [offering proof of total denial of Due Process guaranteed by the Fifth Amendment of the U. S. Constitution] are mind boggling and absolutely warrant exercise of this Court's discretionary powers and that adequate relief [that I strenuously attempted to seek in the lower Court proceedings, including and beginning in the DC but did not receive] cannot be obtained in any other form and from any other court.

A review of all the Appendixes, submitted along with this Petition must demonstrate, that, my two "Complex Litigations" have raised numerous Fundamental Questions about the process and methodology of administration of laws, conforming to most basic tenets of the Federal Constitution.

This Court in *Marbury v Madison* 1 Cranch 137, 177 termed the function of the Federal Court as "[t]he province and *duty* of the judicial department to say what the law is". The CA2NY refused to exercise it's "supervisory authority" and [discharge it's "duty" per *Marbury*, supra] under the Constitution to interpret the Federal Statutes. CA2NY refused to enforce the Federal Statutes, already interpreted by this Court and follow the guidelines established by this Court, under this Court's supervisory authority, pursuant to *Dickerson v U. S.* 530 US 428, 437 [2000] *cf. Carlisele v U. S.* 517 US 416,426. Alternately CA2NY refused to "certify questions to this Court pursuant to this Court's Rule 19 or undertake review of my two cases pursuant to 28

USSC 2106. In doing so, the lower Courts exhausted my Statutory rights of Constitutional Proceedings, before them. That lead this matter to your door step.

Supporting Arguments: Even though, time and again I requested the DC and the CA2NY to "rule on [and as] the matters of Law" the requests have been ignored. The final command in *Marbury*, supra,180 is.."[T]he rule must be discharged" but the record [partly in Appendixes herein], shows that this Court's, long standing *"instruction"* were ignored.

May I respectfully bring to the attention of this Court's opinion in "*Ex parte Young*. 209 US 123,143, [citing comments of Chief Justice Marshall in *Cohens v Virginia* 6 Wheat 264, 404]

> "[I]t is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously to perform our duty.

Chief Justice Marshall went beyond the above and has commented..in *Cohen,* supra..as follows

> "[I]n doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the Constitution and Laws of the United States. We find no exception, to this grant, and we cannot insert one". *Cohens v Virginia* 6 Wheat 264, 404.

When the above is *read* in perspective with this Court's observations in *Dickerson v United States* 530 US 428, [also part of the "holdings"] at 437.

> "[C]ongress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedures that are not required by the Constitution." *Cf. Palermo v US* 360 US 343, 353, n 11 (1959) [citing *Funk v US* 290 US 371, 382 (1933) and *Gordon v US* 344 US 414, 418 (1953)] . ....."[B]ut Congress may not legislatively supersede our decisions interpreting and applying the Constitution. See, e.g. *City Of Boerne v Flores*, 521 US 507, 517-521(1997)]." Id.

Under the circumstances "<u>none of my Constitutional Rights</u>" can be "vitiated or nullified" by *any* act of Congress or act of an Officer of Government, in any branch. That would be contrary to and meaningless to the holdings of this Court, concerning "*Individual's Liberty*", as determined in *Poe v Ullman* 367 US 497 [Generally].

May I also suggest, that, this Court in *Bose Corp. v Consumers Union* 466 US 485, 510-511, reaffirmed it's holding in *New York Times v Sullivan* 376 US 254, relating to "independent appellate review" of matters involving Constitutional Law as the Court observed, at 510-511, such review is essential, "[i]n order to preserve *precious liberties*

established and ordained by the Constitution". Similarly this Court, *cf NAACP v Claiborne Hardware Co.* 458 US 886, 915-916, n 50 and concurring in the judgement in *Houston v Hill* 482 US 451 n 6, agrees that "independent review of record" is appropriate where the activity in questions is protected by the Constitution. Even Justice Scalia concurred with Justice Powell's [separate opinion] in part II. *Id.*472-473.

Record of my both the cases supports, that, *my activities* of "seeking redress, in the Federal Court", arising out of the Federal Defendants, previously violating my 14th Amendment rights "<u>are protected</u>" by the U. S. Constitution. But the lower Courts totally frustrated my efforts, from the outset [since the Rule 16 Conference, before DJ McMahon [DJ]-Appendix B pages 1 to 33]. This is a clear example of Congress and Constitution granting Rights and Remedies to me [or any litigant]and Courts taking them away.

In view of the above reasons [<u>but not exclusively</u> for the "above reasons only"], your Petitioner respectfully suggests, that there is more than sufficient basis for this Court to take Jurisdiction, of the within appeals.

Case No. 1

Ashok Kashelkar v Harold Y. MacCartney, et al
Court Of Appeals for Second Circuit Docket No. 00-7090

Rule 14.1.(e)(i) Nov. 07, 2000 Summary Order of Court Of Appeals for the Second Circuit, affirming the U. S. District Court Decision, Order and Judgement was entered [Filed] on Nov. 07, 2000 [attached or appended in

Appendix B-Pages 1 to 3

Rule 14.1.(e)(ii)	Feb. 09, 2001 Court Of Appeals Order denying Panel Rehearing, entered [Filed] on Nov. 07, 2000 ; that is appended herein in Appendix B-Pages 11-12
Rule 14.1.(e)(ii)	May 31, 2001 Court of Appeals order denying Motion to accept Timely filed En Banc hearing request, entered [Filed] on May 31, 2001; That is appended herein at Appendix B-Pages 18-20

This matter was "argued" on Nov. 01, 2000 before a panel of Three Judges of the CA2NY. A total of Five minutes were provided to this Petitioner and 2.5 minutes were provided to the two counsel [out of three], who appeared.The arguments consisted of each party making statements on the Record.

I "read" excerpts from *Hurtado v California* 110 US 516, relating to the "objectives of a written Constitution"; "limits of the power and authority of each branch of Government [including the Judicial Branch]" 531-533 and observations of Justice Frankfurter re "vague contours of Due Process"... and that "judges are not left free" to draw their own conclusions re Due Process" in *Rochin v California* 342 US 165, 170-171. Even though, I offered these extremely important cases, in support of my arguments, *none* are reflected in the Summary Order. I again raised the same "issue" in my Motion, dated July 02, 2001. [Appendix F, page 3 & 4]

In fact counsel Robert Sylvan of Garcia & Stallone, representing O'Connor, McGuiness et al made an "outright

false statement to the Appellate Panel.. that,... I was looking to ....."reverse the State Court Judgement"..... even that is not reflected in the Summary Order [Appendix B-Pages 1-3].

For that reason, in my letters to the CA2NY Clerk's office, I have raised a most basic question. "as to the appellate process leading to the Summary Order".[AP C. 49-56 & 64-83]

Hon. Amalya Kearse, the Presiding Judge of the Panel indicated that the decision of the Court was "reserved".

The panel members did not ask any questions. The decision was issued on Nov. 07, 2001 and bears a Court Of Appeals Stamp [Filed] showing Nov. 07, 2000 as the date of entry.

In essence, the Court Of Appeals "affirmed the District Court decision, "substantially for the reasons stated therein". The District Court decision is attached in Appendix B-Pages 4-11.

The CA2NY, essentially "endorsed" the DC Decision, notwithstanding my presenting "pointed" arguments, in support of my appeal, entirely based upon the Constitutional Provisions, Statutes, decisions and holdings of this Court.

I respectfully refer your attention to the Appendix D offering "distilled " version of arguments and issues raised [based upon the District Court record] in the Appellate Briefs.

The issues, now raised on Appeals, are reflected in Appendix D Pages 19-51, [HYM matter] forming part of this petition. It is not possible for your Petitioner to "restate" every argument and offer every "citation", in this Petition, "for want of space". However the *extensive* "Authorities" I cited in the Lower Courts, Appendix D, in pages 1 to 18 can tell "a story".

The questions, "presented" in this Petition are "amplified" versions of the "issues raised" in the lower Courts.

Case No. 2

Ashok Kashelkar v Rubin & Rothman, et al [R&R]
Court Of Appeals for Second Circuit Docket No. 00-7751

Rule 14.1.(e)(i)	Jan. 02, 2001 Summary Order of Court Of Appeals for the Second Circuit, affirming the U. S. District Court Decision, Order and Judgement was entered [Filed] on Jan. 02, 2001 [attached or appended in Appendix B-Pages 20-24.
Rule 14.1.(e)(ii)	Feb. 09, 2001 Court Of Appeals Order denying Panel Rehearing, entered [Filed] on Feb. 09, 2001; that is appended herein in Appendix B-Pages 50
Rule 14.1.(e)(ii)	May 16, 2001 Court of Appeals order denying Motion to accept Timely filed En Banc hearing request, entered [Filed] May 16, 2001; appended herein Appendix B-Pages 52-53.

This matter was "argued" on Dec. 20, 2000 before a panel of Three Judges of the CA2NY. Five minutes were provided to each side.

I *"read"* excerpts from *Board Of Regents v Roth* 408 US 564, 576-577 [1972]; re *my property rights, violated* the

Federal Defendants, in violation of the 14th Amendment, during the Rockland County (state proceedings)], giving rise to this litigation and cited *Buckley v Fitzsimmons* 509 US 259, holding that, even a prosecutor is held accountable and liable under 42 USCS 1983, for Fabrication of evidence. In rebuttal, I also "refuted" the arguments of defendant's counsel, Joseph Gershman, ESQ by informing the Appellate Panel, that, the Federal defendants in fact *Fabricated Evidence,* used U. S. Mail or Commercial Carriers to "transport" the *Fabricated evidence* in interstate transactions, then served (upon me) and filed in the State Court proceeding by using U. S. Mail. None of my statements and or arguments or my answers to the Judge's questions are reflected, in the Summary Order.[Appendix B..pages 20-24]

The panel members, included Hon. Pierre N. Laval [also member of Case 1, panel] asked a few *"basic"* questions relating to my case , to me and I answered them, fully well. Then, it became apparent to me that, the Panel Judges were either mislead by reading *"something"* or were not familiar with the record and my Briefs on Appeal, at all. I have commented about this matter, in Appendix F, page 7, para 19 of the affidavit. Such a situation *defeated* the "*process of appeal*".The decision was issued and filed on Jan. 02, 2001.

In essence, the CA2NY "affirmed the District Court decision, "substantially for the reasons stated therein". The District Court decision is in Appendix B-Pages 24-49.

May I respectfully refer your attention to the Appendix A, B, C, E, & F. Appendix E offers a "distilled" version of the "arguments presented and issues raised", in lower Courts.

The issues, I raised on Appeals, are reflected in AP E Pages 31-33 and 74-75, forming part of this petition. It is not

possible for your Petitioner to "restate" every argument and offer every "citation", in this Petition, "for want of space". However, the extensive "Authorities" I have cited in DC and CA2NY are reflected in Appendix E Pg 1-13.

The questions, "presented" in this Petition are "amplified" versions of the "issues raised" in the lower Courts.

The Appendixes:

A Contains, all the Authorities, I have relied upon in the Lower Court proceedings, [verbatim reproduction of applicable portions of statutes and rules etc. is provided, conforming to Rule 14.1(f)]

B Consists of ALL Lower Court Orders.

C Has evidence of the "unusual and very extraordinary nature of proceedings, in lower Courts"

D Has excerpts from the Appellate Brief in Case 01.

E Has Excerpts from DC & CA2NY briefs in Case 2.

F Contains my last Motion to the Court of Appeals to bring the "extra statutory and extra Constitutional acts of the Court Of Appeals employees, to attention of the Judges and the response, dated July 12, 2001.

The Appendixes will be referred to as AP A 33 = Appendix A Page 33, in this Petition.

Petitioner's Contentions

It is not very likely that, a litigant [and that too a Pro Se

litigant] may have two Federal Judicial Proceedings commenced, for egregious Constitutional violations and misconduct perpetrated by the *"very highly regarded professionals" and* simultaneously filed, in one Fed. Court.

I am personally and seriously affected by the issues of \ in the two actions and therefore has valid claims, under Article III of the Constitution, to bring the matter to this Court.

The lower Courts failed to [or refused to ??] "address" the issues [questions] raised, hereunder !

Question 1, 11, 12, 13: Common Law-it's impact and effects on Constitutional Rights of Individuals. This question is posed, on account of the District Court decision, in **Case 1**, that, Bruce Muldoon (BM), Law Secretary of Meehan J. Acting Supreme Court Justice, in Rockland County N. Y.; cannot be sued *Oliva v Heller* 839 F 2d 37, 39 granted "Quasi-Judicial Immunity", to him.

"Common Law Concept and Judicially created immunity or privilege" by Court Of Appeals [other cases are cited in *Heller*, supra]" conflicts with *Hurtado v California* 110 US 516, that "objective of the statutes is to remedy defects in common law"at 533; and *US v Lee* 106 US 196,220 holding that, "no man is above the law".. "and no officer of law can act in defiance of that law ". The "absolute immunity" granted to BM has caused "irreparable harm" to me, based on this Court's finding in *US v Nixon* 418 US 683, 711-712 .

Of course, the entire "immunity" business commenced with *Randall v Brigham* 7 Wall 523 [1869], fortified by *Bradley v Fisher* 80 US 335,[1872]; affirmed in successive cases with the present status of it's becoming *"an avalanche"*.

In *Barr v Matteo* 360 US 564 [1959] at 569 the Court observed that "[t]he law of privilege...has in large part been of judicial making". *Bradley, supra* became the "magic word".

It is absolutely important to note, that, the U. S. Civil Right Laws were not considered, in the *Bradley* action. In fact the Civil Rights Laws, passed in 1871 were not even raised, by any one. The *Bradley* Court based it's entire decision on English Commons Law and decisions, such as *Taaffe v Downes,* 3 Moore P.C. 41, n; *Yates v Lansing*, 5 Johns 291 and even an earlier one *Floyd v Baker* 12 Coke 25 [1608 A.D. ?] and other are totally based upon English Common Law and the U. S. Constitution was *never* considered.

Subsequent cases - *Spalding v Vilas* 161 US 483, Yaselli v Goff 12 F 2d 396 [CA2NY] Aff'd per curiam 275 US 503 [based upon *Bradley*, supra]; *Tenney v Brandhove* 341 US 367 [matter of a legislators] *Barr v Matteo* 360 US 564 and so on have accepted *Bradley*, supra as it's base. None of the Justices, in any case, appear to have raised the issue of U. S. Constitution and Laws, as the "real bar" to such " *Bradley* common law" immunities.

Even though this Court used "objective reasonableness" as the [NEW] standard, beginning with *Harlow v Fitzgerald* 457 US 800, *to cause some change*, it is "still a common law concept". Not much different than changing a Brown Horse for a Black One. Granting such "immunity" has been great "security" for the Govt. Employees, *fostering* their "*faith in impunity*". I am calling upon this Court to revisit this "thorny" but UNCONSTITUTIONAL subject.

Justice O'Connor in *Tower v Glover* 467 US 924 at 922-923 has suggested that "[w]e do not have license to establish immunities from [42 USCS] 1983 actions in the interest of

what we judge to be sound public policy."

The actions of all the attorney defendants, in my two actions, under appeal herein and even the most recent misconduct of CA2NY Clerk's employee [AP C 48-84] show that the defendants herein and the Govt. employees [also attorneys] appear to claim, that, *they are* above the laws and *are laws unto themselves.*

Is that any different than the acts of the English *sovereign* Henry The VIII [In 1534] of beheading Sir Thomas Moore- who was no less than Archbishop of Canterbury and his own wife, Anne Bolane (??)on truncated charges; mother of Elizabeth, who ruled later ? That is the "common law" rule. That is *sovereign* power.

The States [and Federal Govt.] are created as *body politic* and their power is subject to the State & U. S. Constitution. Neither States nor U. S. Govt. can be called "*sovereign*" as H.H. Henry was. His daughter succeeded him. No election was needed. Both ruled in their own ways and were as ruthless as other "*sovereigns*" in Europe. Would current NY Governor, Pataki's daughter succeed him, to *rule* NY ?

Late President Nixon came close to such abuse of power in October 1973, [dubbed October massacre] when he fired Prof. Archibald Cox, after his Atty Gen. Peterson resigned, rather than act, illegally]. That was *imperial* Presidency.

The Government employees are limited in their authority and are answerable to the claims made under Constitution. This Court has ruled so, in *Poindexter v Greenhow* 114 US 274. Otherwise, *U.S. v Lee, supra* and all other cases would mean nothing more but faded prints. The "Immunity and privileges" under discussions are *real dichotomy* created by the Courts,

contrary to the Court's interpretation of Constitutional law and perhaps *repudiation* of numerous cases of the last 200 years and the U. S. Constitution. Time has come to rectify the *"obvious contradictions"*.

Now compare the following:

Beth Meador of CA2NY has admitted in writing of 1) not filing my motion [AP C 49x is the proof] 2) therefore it was not submitted to the Judges and then 3) returned it to me. and 4) did not submit my March 16, 2001; till I wrote the letter of May 12, 2001; that is ruled on May 31, 2001 [AP B 18-20].This is clear violation of 18 USCS 1512 and further "threats to me" are violation of 18 USCS 1513.

Even DJ did not think before making *"intimidating"* remarks to me, AP C 27 (line 1-4) about monetary sanctions. I prepared my affidavit and submitted it to the CA2NY [AP C 1-13]. CA2NY, through it's decision, but the CA2NY did not bother to even acknowledge that, such an affidavit is filed. Nothing on the subject appears in it's Summary Orders, but a remark that, there has been "no hostility or prejudice in DC proceedings" towards me.

What "drives" the above officials to engage in such conduct ? Their *confirmed* belief that, <u>they are the law, above the law and that there is no one to question them</u> ? Hold them accountable for their acts ? **That is sad.** This is *shown to be* Government of Men [by the acts of officials], contrary to the claims of <u>"Government of Laws"</u> *Marbury,* supra at 163.

I cannot accept that the DJ <u>does not understand</u> may claims as decisions claims.[as can be seen AP B, D, E].

By using the <u>eleventh amendment and \ or "Quasi Judicial</u>

Immunity" as a *subterfuge or camouflage*, the DC, "in effect "objectively" immunized" BM.

This *argument* is supported by the observations of C. J. Rehnquist in *Bond v US* 529 US 334, 338 n 2 regarding. ....."objective effect of the action". [cited in AP C-73]

In the same manner, by citing *cases* [AP B-8] the DC dismissed my Civil Rights claims [for reasons cited therein] against all other defendants. The DC calls the State & Federal Penal and Constitutional Violations defendants perpetrated in State Court Proceedings as "irregularities".

Of course, in one swoop, the DC "*disregards*" the Fourteenth Amendment of U. S. Constitution [AP A-3] [and it's progeny of hundreds of cases] as well as the N. Y. State Constitutional Provisions [AP A-43] and the cases decided by the NYS Courts.

AP D-26-44 shows my allegations of all the defendants violating dozens of NYS Penal statutes, leading to "extortion of my rights & property" for my RICO claims and several US Statutes [Civil & Penal] to violate my Civil Rights.

There is a greater reason, for DC's extending such help to defendants. Def. Harold Y. MacCartney [HYM], in fact committed "perjury" by filing a "*false affidavit*" in support of Summary Judgement, contradicting his own answer", signed concurrently, in the DC, Motion Practice. That is in violation of 18 USCS 1621 and 18 USCS 1623. I have dealt with this issue at length. Part is in [AP D-48-49].

In fact, I would suggest the DC *"UNDERSTOOD & noticed the HYM perjury", at the outset*. Instead of abiding by the oath of her office to "performing Constitutional duty", the

DC "*intimidated and threatened me*" in the FRCP Rule 16 conference [that can be seen in AP C 1-31]; wherein the DC warns me of "*monetary sanctions*", contrary to *North Carolina v Pearce* 395 US 711. That prompted me to cite *Mesarcsh v US* 352 US 1, re *polluted* waters of Justice, *Elkins v US* 364 US 206, re *"judicial integrity"* and *McNabb v US* 318 US 332, 345 [Frankfurter J.] warning that flagrant disregard of procedures Congressional commanded. would..make.."courts themselves accomplice in wilful disobedience of law," in my Appellate Briefs.

In "real [non-governmental] world, anyone tolerating or encouraging "*subornation of perjury*" is indictable under 18 USCS 1622. Who will hold the Court Personnel [and Judges too] accountable, for that ?

Looking at Fn1, AP B 11, the statement..."[b]ut it is not necessary to treat the motion for summary judgement in order to dismiss the action" SDNY-DJ may have "avoided to take HYM Affidavit [with perjury] into consideration. But in doing so, DJ "intentionally and knowingly" avoided her responsibility to deal with HYM perjury " in Federal Judicial Proceedings. Why would anyone call this a JUDICIAL PROCEEDING ? Please see *Smith v Robbins* 528 US 259, 286 [generally].

District Judge Susan Weber Wright acted to sanction President Clinton and the Hon. Chief Justice is more familiar with that entire melodrama than anyone else.

Whatever prompted DJ or the CA2NY judges from performing their Constitutional duty ? The."objective effect is discrimination towards me", *Bonds, supra*. The judges saved the counsels from Gallo, at my cost and millions of others. That is also *offensive* to the Constitution. Please see *US v*

Classic 313 US 299, 331 [generally]. Such official acts are performed with *confirmed belief* that, all my Constitutional rights will be extinguished at the CA2NY level and I will not have any grounds, based on RIGHTS, to come to this Court.

Case No. 2 The DC [notwithstanding my presentation part of which is in AP E] and presenting "documentary" evidence under the very signatures of the defendant's [and employees] *that is admissible, at Trial*, is against the "interest" of the defendants, showing "statutory violations" over a long period of time [and therefore meeting every conceivable requirement of RICO and Civil Right claim s] dismissed all claims, for reasons cited, in it's decision. [AP B 24-49].

DC used the HYM case, *to base and judge* the R&R Case. By doing so, the DC, in fact provided "protection" or immunity to the defendants. That is the "objective effect" discussed in *Bonds v US*, supra [opinion of C. J.].

DC also employed *Rooker-Feldman* doctrine to dismiss the claims. I have argued that the Defendant attorneys in both the cases were not parties to the previous State Proceedings, but they represented different parties. Please see *US v Goodwin*, 457 US 368, for comments, re "institutional bias".

Exception is that of Household International Companies (HI), in the second action [they had interest in State action] but in reality none of the HI defendants herein [were in technical sense party to the State proceeding-since R&R used a...nonexisting company name, to sue me]. I did not create "that" situation. Besides, the HI companies are here because their conduct their business by employing multiple statutory and regulatory violations. HI could not care at all as to

whatever papers were presented for their cause, by their attorneys [their agents] as long as the HI got their money, in their pocket. Such reckless disregard for laws, requires appropriate response.

In Rockland action by R&R, Justice Rudolph was totally hostile and unsympathetic to me in applying even the State Laws and could not care less about any other FEDERAL laws [This Court recognised *such a possibility* in *Kaufman v US* 394 US 217, 225]. Even though Justice Rudolph was *"well versed"* in *laws* compared to me [and his duties under U. S. Constitution, Article VI required him to conduct and also was required to take Judicial Notice by NYS CPLR 4511], he did not bother. Justice Rudolph's duty to provide 14th Amendment protection is recognised by *Daniel v Williams* 474 US 327, 331-332. I was not protected, in his Court.

DC decision and order contains so many errors, that, I have highlighted them in AP B 24-49 and provided excerpts and comments AP E 51-74 [in appellate brief].

Because, the DC used *Davidson v Garry* 956 F Supp 265, 268-269 Aff'd 112 F 3d 503 [CA2NY 1997] that in essence used *Rooker-Feldman* doctrine as well as *Younger v Harris* 401 US 37 [1971]; as it's vehicle in HYM matter,[see AP B-7]; it is necessary to decide the "undecided issue" as to whether *Younger* has any application to Civil Proceedings My response is "NO", it does not apply. [Question 1 C]

DC in R&R action "objectively in effect" immunized the defendants [per *Bond*, supra]

While finding "proof" of a "wrongdoer's" misdeed, usually becomes subject of protracted "discovery" pursuant to the FRCP rules, I presented my claims, with admissible proof, at

the outset with complaints. The admissible proof is under the signatures or writings of the named defendants themselves.

Question 2 and 12: Judicial Authority and Acts of Non Judicial Personnel: have total bearing on all the orders, I have received from the CA2NY [AP B. including the Summary Orders [both cases] the HYM Mandate]. AP C Pages 34 to 84 show that, ALL the "orders" I have received, none are signed by any Judge Of CA2NY. All are "signed" by the CA2NY Clerk's office personnel. I am *alleging*, that, they have acted on their own, without presenting anything to the Judges and even writing the Summary Orders, contradicting the entire Constitutional Scheme.

This *allegation,* arises out of the CA2NY issuing it's March 09, 2001 "denial" [AP B 13-14], for extension of time. That *denial* contains my "request for RIGHT TO *WORK"-as a good cause*, seeking extension under FRAP [permitting a litigant to request extension of time for "Good Cause".

The *denial* does not offer any reason, at all. There is NOTHING in the "so called decision of denial from CA2NY that anyone can infer anything" to find as to the exact reasons, my request was denied. This is identical to this Court's observing in *M. L. B. v S. L. J.* 519 US 102,121-122 . "[O]nly a transcript can reveal to judicial minds other than the Chancellor's, the sufficiency or insufficiency, of the evidence to support his stern judgement.

In *Black v Romano* 471 US 606, 611-612, this Court held that, "[T]he probationer is *entitled* to *written notice* of..... and....*written statement* by fact finder as to the evidence relied on and the reasons for revoking probation" [citing *Gagnon v Scarpelli* 411 US 778, 482, etc.]. Is it improper for me to know, as to the "exact reasons" the decision maker relied

upon while reaching the decision to deny me the right to work and earn living?

Not understanding the reasons, why the CA2NY Judges would deny me the "most basic right" to work by refusing to give two more weeks to file En Banc Petition , I have concluded that, the Judge's were not reading the papers or *did read the papers* but wanted to disregard this Court's decisions and rulings about basic rights. That does not comport with my respect to all of them. That prompted me to ask for " statutory or constitutional reasons for *such a decision* and identity of person(s) reaching such a decision in my Motion of March 23, 2001 [AP C 44-Para 10].

Questions arise, as to who wrote ALL the decisions and orders ? Would any Judge of the CA2NY come forward and claim authorship of the "so irresponsible" and "*recklessly disregarding*" Supreme Court decisions, the Federal Statutes and the Constitution ? Or these are acts are of Non Judicial Personnel ? Who delegated such authority to any of them ?

Justice Scalia dissenting in *Mistretta v US* 488 US 361, 424-425 has commented that, the "*Judicial Powers are not delegable*". Justice Scalia cited *J. W. Hampton Jr. & Co. v US* 276 US 394, 406 [limits of delegation]; *Yakus v US* 321 US 414 [war making powers] and *Field v Clark* 143 US 649, 692 [Congress cannot delegate legislative power to the President](1892) opinion of Justice Harlan and finally "[a] judge may not leave a decision to a law clerk or a master" *US v Raddatz* 447 US 667, 683; support the premise.

The result of my inquiry in March 23, 2001 affidavit [AP C 42-47] is Beth Meador's letter of April 6, 2001 [AP C 48-49] along with which, Ms. Meador returned my March 23, 2001 Motion, with a clear THREAT of sanctions from the

Court. AP C Page 49-X will show, that the Motion [AP C 42-47], was not filed, at all. That, of course, prompted me to write the next letter, with questions about the "process" followed in Clerk's office [AP C 49-57] and a "pointed questions" on pages AP C 53 to 55, about the "criteria" for "handling Motion papers" in the Court. **I never received any answer.**

Besides, this is an "elementary & common sense" issue. The I. R. S. of the U. S. Dept. of Treasury holds the Taxpayer, responsible, even though a professional tax account may prepare and sign the return. The Taxpayer is required to sign, it. Signature is the source responsibility and accountability".

By refusing to answer my questions posed on pages AP C 53 to 55, the personnel in CA2NY Clerk's office have given reason for me to suggest that, the decisions on the motion and perhaps even the Summary Order were not taken by any of the Judges of the CA2NY [even though they are issued in the name of the CA2NY Judges.

The letters from Ms Meador of CA2NY { AP C 57-59 and 63-64 }, further admitting "lapses" prompted me to write the next letter, AP C 64-83. There is no question in my mind that, it is "well known" in the Federal Courts, that, Cases filed by and Appealed by "Pro Se" litigants are to be treated that way. No wonder, DJ. was "so absolutely certain, that NO MATTER what she will say or do, my reach was up to the CA2NY where, my cases would be "shredded to pieces" and I will Exhaust ALL MY STATUTORILY provided for recourse. Why a Federal Judge has to "approve an official transcript"? Please see AP C 8-9, para 43-44. Such "process followed in DC-SDNY.. CA2NY in *U. S. v Zichettello* CA2NY Docket No. 98-1376, admonished SDNY, per report in NY Law Journal, referring to the "changes" made in

transcript. Because the situation [in Zichettello] was brought *"to head"* by the U. S. Attorney's office, it was dealt with. I cited it, in my briefs. **Since, the clerk's personnel were "deciding" my cases in** CA2NY, nothing mattered. All my citations in AP A , did not make any difference to them.

Such "custom, practice and common usage" transcending the "written laws" need not be limited to State Governments only [see *Adickes v Kress & Co.* 398 US 144] but now is shown to be Present, alive and used in the Federal Courts This is a "systemic problem", *Lewis v Casey* 518 US 343. In *Lewis*, supra, this Court observed, at 357, "[I]f once a plaintiff demonstrated harm from one particular inadequacy in government administration, the courts were authorised to remedy *all* inadequacies in that administration.". I cited *Lewis supra* in my briefs. Who was reading the briefs ? No one knows. No one cared. No one acted. No one corrected any thing. Everyone dispensed "*injustice*".

Does all of the above mean, that the Judges in CA2NY are turning a *"blind eye and deaf ear"* to all of the above illegal conduct, denying my rights as well as rights of thousands of other Pro Se litigants ? The answer emphatically, MUST BE YES. That is the reason, in AP F, you will see, that, upon my requesting the CA2NY to "take notice of the discrimination and improprieties in Court Administration" the same is DENIED. [AP F 1-2]. This leads us to my Question no 12.

May I suggest, that, these acts of CA2NY employees conduct themselves in "extra-judicial, extra statutory, unconstitutional, deceptive" and outright scandalous manner, with "impunity" that, this Court in *US v Lee* 106 US 196, at 200 observed as "unacceptable." Therefore, I respectfully request this Court to remedy this grave constitutional problem in CA2NY. I have also cited unanimous decision in

Texas & Pacific R. Co. v Rigsby, 241 US 33, 39-40 [1916] that"[A] disregard of the command of the statute is a wrongful act" and pointed to the fact. Time has come to revisit *US v. Shipp.* 214 US 386, 425 (1909) "[I]t was not only in defiance of our mandate but was understood to be such..... by defeating the hearing of the appeal necessarily follows from the defendants' acts..... the administration of justice becomes a mockery." My cases show a complete and successful mockery of every decision since *Marbury, supra* in CA2NY and SDNY.

Similarly the DC statements [relating to "discovery" under FRCP]are totally contradictory to *unanimous opinion* of this Court in *Nelson v Adams USA, Inc.* 529 US 460, 465; vis-a-vis FRCP and due process. Do you believe that the CA2NY should have "heeded by this Court's decisions ?" Or by their active "disregard" of the Laws, Constitution and this Court's decision, are the lower Courts informing all Pro Se litigants that, none of that is for the Pro Se Litigant's benefit ?

For the above reasons alone, the above two questions become paramount reasons, to grant my petition.

Question No. 10, 11, 13, 14: Disregard for Laws, Constitution and this Court's decisions -Meaningless Rituals.: The above discussion must show, that, there is NONE OF THE ORDERS from the Lower Courts, *can be considered reliable*, in both of my cases. For that reason, my claims that, I have been subjected to deprivations of my Fifth Amendment and Thirteenth Amendment protection, are absolutely accurate. All of this is akin to "judicial proceedings which never took place"cf *Smith v Robbins* supra in *Roe v Flores-Ortega* 528 US 470, 483 [Justice O'Connor delivered the opinion for the Court]

Griffin v Illioins 351 US 12 imposes affirmative duty upon the States, to provide "certain" benefits... and *Bounds v Smith* 430 US 817, 829 that, states have certain "affirmative federal constitutional duties". *Marbury*, supra at 177, held that, it is the "duty" of the "Courts" to say what the law is. Even though I provided necessary "cites" in my DC and CA2NY briefs, to enforce the "*invoked*" laws properly, the lower Courts failed in their "duty". Is there any duty upon the Federal Courts or not ?

The DCs and CA2NY have always interpreted the Laws, [whether correctly or NOT, may be subject of appeals and controversies]. In my case, they have simply refused to do so. In this manner, the Courts are coercing me to "WALK ON FIRE ". This is equal to "subjecting" [*Davis v Monroe County Board Of Education* 526 US 629, 645] me to "unusual punishment and imposition of burden upon me, to go to the Supreme Court, where most of the Petitions are declined." This in turn violate my 8th & 13th Amendment [by intentionally taking away my Constitutional rights to Due Process in Federal Judicial Proceedings] protections. This Court in *Clyatt v. United States*.197 US 207,218 [1905] .cf. *Plessy* v. *Ferguson,* 163 U. S. 537, 542 Mr. Justice Brown, delivering the opinion of the court, said: "[S]lavery implies involuntary servitude, a state of bondage;... or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. I am claiming that the lowers [Federal]Courts took "my statutory rights"away, without my consent. I have been "unusually punished".

In the *Civil Rights Cases* 109 US 3 at 21, Justice Bradley writing for the Court citing various "feudal vassalage" in France, suggested, that , "all inequalities and observances exacted by one man from another, were servitudes, or badges

of slavery". Then suggested, that "such servitudes" if imposed by state law [In US]would be repugnant to the 14th and 13th Amendment of the Constitution.

In fact the same was done in the "underlying state actions" and the DJ writing in her opinion { AP B 8.. That.."Plaintiff has no constitutional right to have motions served in accordance with the deadlines set forth in the CPLR or to have adjournments denied when he opposes them".} DJ did not find any NY Court Case, Law or Constitutional provision to cite and she cited "more wrongfully decided CA2NY and CA7IL, Cases". I have commented enough in Appellate record about such and other remarks. DJ supports violating my 14th and 13th Amendment rights. No wonder the entire decisions and orders of DC and then their "affirmances" by CA2NY are "riddled" with such "convoluted logic".

Under what "criteria" the lower Courts proceedings are to be "termed" "meaningful, full and fair, without hostility and complying with any of the State Or Federal Constitutional provisions or statutes ? In fact, all of them, cumulatively fit the description of "[d]iscrimination, so unjustifiable as to be violative of Due Process" in *Bolling v Sharpe* 347 US 497, 499.

With the "specific" objectives [of saving HYM, that is not "so stated" but must be accepted as the "effect"] the DC proceeded to "corrupt, misstate, misconstrue and contaminate the record and the "truth seeking" process". That is prohibited by *US v Agurs* 427 US 97, 121; and *Rankin v McPherson* [generally] 483 US 378 and that is "willful lawlessness, in the name of enforcement" *US v Payner* 447 US 727,734. On AP B 25. . DC claims that I *"have sued a State Judge"* and P 26 "R&R conspired with state Judge" observations are FALSE. That goes directly to question 13.

I would go a step ahead and say, that "great efforts have been made to save HYM. in both the lower Courts. Consider that the "decisions of March 09, 2001; AP B 15-18 [consisting of 1) denial of Feb 17, 2001 Motion for extension of time, 2) issuance of Mandate] and then terming my Feb. 17, 2001 [extension of time { similar to HYM matter Motion} motion in R&R action, as that of March 09, 2001]; granting it, on Motion Clarification Form, [AP B 51-52]of April 06, 2001 ; to "present the petition for En Banc hearing to the entire Court". Now compare that, with the AP C 48-49 letter, returning the March 23, 2001 Motion, without Filing or even presenting to the Judges [see AP C 49X], the CA2NY either with consent of the Judges or without their knowledge, were *dangling a "carrot"* of En Banc for R&R, before my eyes, while suppressing the HYM matter by issuing a "threat to impose sanction". This is direct, intentional, knowingly committed , unequivocal violation of *18 USCS 1512* . Then the CA2NY personnel retaliated by DENYING motions in both the cases AP B18-20 and AP B 52-53. In fact the denial in R&R AP B 52-53 is dated May 16, 2001 that would be "just two days after Ms Meador received my letter AP C- 64-83, that would have reached on the 14th of May, 2001. That is violation of *18 USCS 1513.*

Questions 3, 4, 8-Frauds and consequences-Statute of Limitations and NYS CPLR 213: Fraud is rampant upon people, in the nation. It is accepted by the Congress, "to be the fact of life" while passing the RICO statutes. The Courts have called them "garden variety fraud" and accepted "so" in *Agency Holding Corp. v Malley Duff & Assoc* 483 US 143, 149; *Sedima S.P.R.L. v Imrex Co* 473 US 479; and in *Supt Of Insurance v Bankers Life Ins. Co.* 404 US 6, fn 7 this Court cited a CA2NY Case *A. T. Brod & Co v Perlow* 375 F 2d 393, 397, that, "[N]ovel or atypical methods should not

provide immunities from the security laws". Which means that "no one should escape, application of laws". But USDC in R&R action refuses to apply laws to the attorney defendants [see AP B 43-highlighted sentence].

In *Shuttlesworth v City Of Birmingham* 382 US 87, the Petitioner therein was "imposed fines and costs of $ 100.00 by the Alabama Courts, in addition to a sentence". This Court accepted the Petition and granted Certiorari and resolved it. In my case, as a result of the Defendants in First action, collectively developing success , "dismissing" my suit for my Automobile Damage and other losses of over $ 5,000.00 and a Potential damages and Punitive Damages against GEICO, the insurance company of "several thousand dollars" deprived me of "substantial property and rights, loss". In the second action the R&R and HI defendants caused actual loss of my property and deprived of my rights and property to the tune of several thousand dollars. Fraud were the reasons in both the cases.

New York State CPLR provides for SIX Years of time, to bring an action for 1) where the time limit is not specified in statute and 2) for fraud [AP A 68-69]. I have consistently asked the lower Courts to apply CPLR 213, for my action and they have refused. In the opinion by Justice Souter, in *North Star Steel Co v Thomas* 515 US 29, 33 discussed the situation of applying State Statutes, very eloquently. In *Miller v California* 415 US 15, 30 this Court observed.."[o]ur nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 states in a single formulation". Even though the issue there is First Amendment related, since each state has different "statutory scheme" to apply for various issues [an it is done in most instances] and there is simply no reason, to deny those rights to each state. Besides, all people from all

states do not file their claims in One Federal Court to cause any confusion. In *Wilson v Garcia* 471 US 261, 277-278 this Court accepts in Principle that,"all persons shall be accorded the full privileges of citizenship" and it refers to the 14th Amendment issues. In *St. Francis College v Al-Khazaraji* 481 US 604 this Court permitted use of 6 years statute of limitation [contract claim in Pennsylvania], while in *Clark v Jeter*, 486 US 456 [1988] (also a Pennsylvania action)Court found the 6 years statute of limitations for a child's claim, to be "unconstitutional". I do not see that *Clarke* limited to 3 years, because *it was a negligence* claim, from state of Pennsylvania. The Court took, into consideration applicable Pennsylvania law [relating to children] and honored it.

I am asking for use of a valid and constitutional NY State Statute, for application to RICO as well as Civil Rights cases arising out of FRAUDS.

In *Rotella v Woods* 528 US 549, 560, the Court doubt fears of *Rotella* that FRCP Rule 9(b) effectively bar claims like *Rotella,* supra. In my case, no matter how much proof I have produced, under the very signatures of the defendants herein in both the cases, the DC used FRCP 12(b)6 to dismiss my claims. It was difficult for me to "understand the patterns" of the defendant's "misconduct" in order to "fit within the FRCP requirements". My cases are the "perfect" examples, that *Rotella* supra may not have offered. Besides, while in *Rotella supra*, this Court refers to FRCP 11(b)(3) to develop evidence, the decisions and orders of DC-"affirmed by the CA2NY" shows that, all my discoveries have been denied. As stated before DC decision also conflicts with *Nelson, supra.*

At the same time, in AP B 34, the DC acknowledge that I have not "clearly articulated negligence claims". Reasons are simple and ample. My claims [Civil Rights and RICO] in

both actions are for FRAUDS.

I cannot overlook the fact, that, in the SDNY and EDNY Courts of NY, the survivors of Holocaust are pursuing Swiss Banks and German Insurance companies (in the year 2000-2001), with blessings of DJ in both the Court and are receiving "settlements", cumulatively reaching BILLIONS OF DOLLARS. Those actions are filed, well beyond any known "statutes of limitations". Still, they are successfully pursued.

For the above reasons, my questions No. 3, 4,8 and 9 must be answered in favor of this Petitioner and will serve the U. S.

Questions 5,6,7, 9 & 13: Proper Application of Law: Refer to "statutory" interpretations. The DC has specifically ruled. DC has failed the "due process" test, re "FRCP Rules" under *Peguero v US* 526 US 23; *Nelson,* supra and in spite of the holdings of this Court's holding in *Conley v Gibson* 351 US 41, 48; *Maty v Grasselli Chemical Co.* 303 US 197; *O'Donnell v Elgin, Joliet & E. R. Co.*338 US 384,392; insists that this Petitioner did not state facts. AP B 8,9 & 10, as well as AP B 35,39, 40 regarding "statement of facts". The CA2NY Summary order AP B 23, toes the same line.

While claims under 42 USCS 1981 do not require "racial animus" per *Patterson v Mclean Credit Union* 491 US 164, 174-175 ; the DC ruled otherwise. AP B 35. DC refused to recognise, that the defendants influenced and used the State Court Official to accomplish their goal, sufficient, to become state actors, under 42 USCS 1983; *Lugar v Edmondson Oil Co.* 457 US 922; . 42 USCS 1985 is governed by *U. B. of Carpenters v Scott* 463 US 825, 833; *Griffin v Breckenridge* 403 US 88 [and also 13th Amendment issue]; & *Haddle v Garrison* 525 US 121. All of the above go to the Question 13,

Coming to questions No. 5,6,7 & 9.. All of which relate to the RICO application. DC decisions in R&R has been more explicit, in this regard.

AP B 39, 40, 41, 42, 43, 44, 45, 46 statement has direct relation with *highlighted* portion with question 6 & 7. The statutes 18 USCS 1962(d) says a, b, **OR** c. DC holds otherwise. On same page the DC holds that I have not claimed "Commercial Injury" that goes to the question 5. AP B 47.. About "ONE ACT" goes to question 9. I have pleaded that the "Interpretation of statutes of act of Congress must be made by giving "ordinary, contemporary & common meaning" , as determined by this Court in *cf. Walters v Metropolitan Education Enterprises, Inc* 519 US 202, 207 in *Williams v Taylor* 529 US 420, 431. [Unanimous Opinion for the Court, by Justice Kennedy]; *Holloway v US* 516 US 1,6; *Snyder v Harris* 394 UD 332 " [r]ights of the parties neither be abridged nor be expanded; *INS v Cardoza-Fonseca* 480 US 42 "[C]ongress does not intend sub-silentio to enact statutory language it has earlier discarded in favor of other language," at 441 and "[C]ourt should not announce equitable exceptions" in *Hugh Aircraft Co v Jacobson* 525 US 432.

In conclusion, the foregoing must demonstrate, that this matter would be in aid in this Courts Appellate Jurisdiction. This is to respectfully request this Court to grant my Petition, for Writ of Certiorari to the U. S. States Court of Appeals for the Second Circuit.

Spring Valley, NY
August 06, 2001

Ashok Kashelkar - Petitioner Pro Se
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Spring Valley NY 10977
Tel No. (845) 426 2902

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix A - Conforming to Rule 14.1(f)

Petitioner - Ashok Kashelkar - Pro Se
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In the United States Supreme Court

Case No. 1

Ashok Kashelkar

Plaintiff \ Appellant \ Petitioner

-against-

Harold Y. MacCartney, Jr.; Debora J. Dillon; William R. Watson; Bruce Muldoon; MacCartney, MacCartney, Kerrigan & MacCartney; O'Connor, McGuiness, Conte, Doyle, Olsen & Collins; JOHN DOE No.1; JOHN DOE No.2 JANE DOE No.1; JANE DOE No.2

Defendants \ Appellees \ Respondents

Case No. 2

ASHOK KASHELKAR

Plaintiff \ Appellant \ Petitioner

-against-

RUBIN & ROTHMAN ; JOSEPH LATONA ; ROBIN LONG KEITH ROTHMAN; SCOTT RUMPH; HOUSEHOLD INTERNATIONAL, INC. HOUSEHOLD RECOVERY SERVICES ; JOHN DOE No.1; JOHN DOE No.2 JANE DOE No.1; JANE DOE No.2

Defendants-Appellees \ Respondents

This submission is by..... Ashok Kashelkar-Pro Se
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Spring Valley, NY 10977
Tel. (845) 426 2902

Statement Of Petitioner

Ashok Kashelkar, petitioner herein respectfully states, that, the within "authorities" have been compiled, in support of this petition. The "authorities" have been used during the District Court as well as Appellate proceedings, in both the cases.

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 20, 2001

Ashok Kashelkar
Pro Se Petitioner
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Spring Valley NY 10977
Tel. (845) 426 2902

Following conforms to Supreme Court Rule 14.1(f)

United States Constitutional Provisions; United States Statutes; Code Of Federal Regulations; Decisions of the United States Supreme Court; Decisions of U. S. Court Of Appeals; Decisions of U. S. District Courts.

New York State Constitutional Provisions, New York State Statutes, New York State Regulations, Citations of Cases adjudicated by New York State Courts, including it's appellate Courts.

These Authorities have been used in the Lower Court Proceedings, at different stages

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U. S. Constitution

Article VI..

Clause [2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment 1. [Religious and political freedom.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the

people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 5.
[Criminal actions–Provisions concerning–Due process of law and just compensation clauses.]

No person shall ..... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. Const- Amendment 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U. S. Constitution SEVENTH Amendment [Trial by jury in civil cases.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 8. [Bail–Punishment.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 10.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

US Const-Amendment 13. (Adopted December 18, 1865)
Sec. 1. [Slavery prohibited.]

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment 14. (Adopted July 28, 1868)
Sec. 1. [Citizenship–Due process of law–Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC APPENDIX - RULES OF CIVIL PROCEDURE

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends,

unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading To Be Concise and Direct; Consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required. (2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading Special Matters

(b) Fraud, Mistake, Condition of the Mind. In all averments

of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the

contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -

(1) it is not being presented for any improper purpose,

such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated. (A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2). (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 12. Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

(b) How Presented. Every defense, in law or fact, to a

claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether

made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference

or conferences before trial for such purposes as (1) expediting the disposition of the action; (2) establishing early and continuing control so that the case will not be protracted because of lack of management; (3) discouraging wasteful pretrial activities; (4) improving the quality of the trial through more thorough preparation, and; (5) facilitating the settlement of the case.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence; (4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence; (5) the appropriateness and timing of summary adjudication under Rule 56;

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any

issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

Rule 39. *Trial by Jury or by the Court*

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The

court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

12 USCS. 38 The National Bank Act

The Act entitled "An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, shall be known as "The National Bank Act."

12 USCS. Section 1467a. Regulations of holding companies

As used in this section, unless the context otherwise requires-
(c) Holding company activities (1) Prohibited activities
Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall–

(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

(B) commence any business activity, other than the activities described in paragraph (2); or

(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

(4) Prior approval of certain new activities required

(A) In general.... No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Director.

Code Of Federal Regulations- Banks and Banking

PART 535-PROHIBITED CONSUMER CREDIT

PRACTICES

See.
535.1 Definitions. 535.2 Unfair credit practices.
535.3 Unfair or deceptive cosigner practices.
535.4 Late charges. 535.5 State exemptions.

AUTHORITY: See. 18, as added by sec. 202, 88 Stat. 2193, as amended (15 U.S.C. 57a).

Source: 54 FR 49479, Nov. 30, 1989, unless otherwise noted.

§ 535.1 Definitions

(a) Act. For the Purposes of this part, " Act" means the Federal Trade Commission Act, 15 U.S.C. 41 et .seq.
(b) *Consumer*. The term "consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended "consumer credit" as defined in §56l.12 of this chapter.

(g) *Household goods*. The term "household goods" means clothing, furniture, appliances, linens, china, crockery , kitchenware, and personal effects of the consumer and his or her dependents, provided that the following are not included within the scope of the term .'household goods":

(1) Works of art; (2) Electronic entertainment equipment (except one television and one radio); (3) Antiques, i.e., any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character, and (4) Jewelry (other than wedding rings).

(h) *Savings association.* For purposes of this part, the term "savings association" includes any savings association, and any service corporation that is wholly owned by one or more savings association, that engages in the business of providing credit to consumers.

§ 535.2 Unfair credit practices

(a) In connection with the extension of credit to consumers after January 1, 1986, It is an unfair act or practice within the meaning of section 5 of the Act for & savings association directly or indirectly to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation purchased by a savings association, any of the following provisions:

(1) A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon:

(2) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation;

(3) An assignment of wages or other earnings, unless:
(i)The assignment by it's terms is revocable at the will of the debtor, (ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or (iii) The assignment applies only to wages or other earnings

already earned at the time of the assignment.

(4) A nonpossessory security interest in household goods other than a purchase-money security interest.

§ 535.5 State exemptions.

(a) Upon application to the Office by an appropriate state agency, the Office shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and (2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule.

(b) If the Office makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Office in it's determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Office.

(c) The Director of Consumer Affairs in consultation with the Chief Counsel shall have delegated authority to make such determinations as are required under this part 535.

PART 541-DEFINITIONS

Sec. 541.1 General. 541.2 Act. 541.3 Combination of home and business property . 541.4 Combination of residential real estate - and business property involving only minor or incidental busi8ness use; 541.5 Commercial paper. 541.6 Cooperative housing development. 541.7 Corporate

debt security. 541.8 Debit card. 541.10 Dwelling unit.
541.11 Federal savings association. 541.13 Guaranteed loan.
541.14.Home. 541.15 Improved nonresidential real estate.
541.16 Improved residential real estate. 541.17 Insured loan.
541.18 Interim Federal savings association. 541.19 Interim state savings association. 541.20 Loans.
541.21 Nonresidential real estate.541.22 [Reserved).
541.23 Residential real estate. 541.25 Single-family dwelling.
541.26 Surplus. 541.27 Unimproved real estate.
541.28 Withdrawal value of a savings acc count.

Authority: 12 U.S.C. 1462a, 1463, 1464.
SOURCE: 54 FR 49480, Nov. 30, 1989, unless otherwise noted.

§541.1. General

Unless another definition is provided in this chapter, definitions in part 561 of this chapter apply.

§ 541.2 Act..

The term *Act* means the Home Owner's Loan Act of 1933, as amended.

§ 541.11 Federal savings association.

The term Federal savings association means a Federal savings association or Federal savings bank chartered under section 5(0) of the Act.

§ 545.1 General authority.

A Federal savings association may exercise a11 authority granted it by the Home Owners' Loan Act of 1933 ("Act"),

12 U.S.C. 1464, as amended, and it's charter and bylaws, whether or not implemented specifically by Office regulations, subject to the limitations and interpretations contained in this Part.

§545.11 Issuance of accounts

(a) Prior to doing business and issuing accounts as defined in § 561.2 of this chapter, a Federal savings association shall obtain and maintain insurance of all its accounts by the Federal Deposit Insurance Corporation.

(b) *General.* Pursuant to section 5(b)(I) of the Act, a Federal savings association may issue accounts as defined in § 561.2 of this chapter . A "Federal savings association may establish classes of accounts and specify terms and conditions for such classes of accounts. Amounts deposited in accounts may be in cash or property in which the association is authorized to invest. The authority of a Federal savings association to issue accounts pursuant to this part is subject to any applicable provision of part 563 of this chapter.

(c) *Status and priority of savings deposits and accounts.* In the event of voluntary or involuntary liquidation, d1ssolution, or winding up of the association, or in the event of any other situation in which the priority of savings deposits and accounts is in controversy, such savings deposits and accounts shall, to the extent of their withdrawable value, be debts of the Federal savings association having the same priority as debts of general creditors who have no priority, other than from consensual subordination, over other general creditors. Savings deposits of Federal mutual savings associations shall have the same right to share in the remaining assets of the Federal savings association that savings share accounts would have.

PART 556-STATEMENTS OF POLICY-

Sec. 556.5 Branching by Federal savings associations. 556.12 Deposit assurance of direct deposit of-social security payments. 556.13 Receipt of interest expressed as a percentage of other income.

AUTHORITY: 5 U.S.C. 552, 559; 12 U.S.C. 1464,1701j-3; 15 U.S.C. 1693-1693r.

SOURCE: 54 FR 49538, Nov. 30, 1009, unless otherwise noted.

§ 556.6 Branching by Federal savings associations.

(a) *General.* A Federal association may branch in any state or states of the United States and its territories except as provided in paragraph (b) of this section, subject to the requirements of paragraph (c) of this section.

(b) Limitations. No branching will be permitted under Paragraph (a) of this section that ,will result in the following:

(1)-Establishment or operation of a branch outside the state in which the association has its home office in violation of section 5(r) of the Home Owners' Loan Act;

(2) Formation by any company of a multiple savings and loan holding company controll ing savings associations in more than one state in violation of section 10(e)(3) of the Home Owners' Loan Act; or

(3) Acquisition of a savings association and the establishment and operation of new branches by such savings association in violation of section 13(k)(4) of the Federal Deposit Insurance

Act.

(c) Branching applications. (1) *General.* Prior to opening a branch, an association must obtain approval of a branching application pursuant to §545.92 of this chapter. The Office may approve or deny an application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. In granting supervisory clearance to an applicant, the Office will consider whether the policies, condition, and operation of the applicant are satisfactory and afford no basis for supervisory objection.

PART 560-LENDING AND INVESTMENT

§ 560.1 General

(a) *Authority and scope.* This being issued by OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act (HOLA), 12 U.S.C. 1462 *et seq.* Subpart A of this part sets forth the lending and investment powers of Federal savings associations. Subpart B of this part contains safety-and-soundness based lending and investment provisions applicable to all savings associations. Subpart C of this part addresses alternative mortgages and applies to all savings associations.

(b) *General lending standards.* Each savings association is expected to conduct its lending and investment activities, prudently. Each association should use lending "and investment" standards that are consistent with safety and soundness, ensure adequate portfolio diversification and are appropriate for the size and condition, of the institution, the nature and scope of its operations, and conditions in its lending market. Each association should adequately monitor

the condition of its portfolio and the adequacy of any collateral securing its loans.

§560.2 Applicability of law.

(a) *Occupation of field.* Pursuant to sections 4(a.) and 5(a.) of the HOLA, 12 U.S.C. 1463(a), 1464(a.), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices (by efficiently delivering lowcost credit to the public free from undue regulatory duplication and burden), OTS hereby occupies the entire field of lending regulation for federal savings associations. OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation. Accordingly, federal savings associations may extend credit as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise affect their credit activities, except to the extent provided in paragraph (c) of this section or § 560.110 of this part. For purposes of this section, "state law" includes any state statute, regulation. ruling, order or judicial decision.

(c) State laws that are not preempted. State laws of the following types are not preempted to the extent that they only incidentally affect the lending operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law; (2) Real property law; (3) Homestead laws specified in 12 U.S.C.I462a(f); (4) Tort law; (5) Criminal law; and (6) Any other law that OTS, upon review, finds:

(i) Furthers a vital state interest; and (ii) Either has only an incidental effect on lending operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

§ 560.3 Definitions.

For purposes of this part and. any determination under 12 U.S.C. 1467a:

Consumer loans include loans for personal, family, or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit. but do not include credit extended in connection with credit cards nor bonafide overdraft loans.

§ 561.2 Account

The term *account* means any savings account, demand account, certificate account, tax and loan account, note account, United States Treasury general account or United States Treasury time deposit-open account, whether in the form of a deposit or share, held by an accountholder in a savings association.

§ 561.12 Consumer Credit

The term consumer credit means credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured

by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: *Provided*, the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in a savings association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

§ 561.32 Normal lending territory.

(a) Normal lending territory is the area (1) within the State in which such savings .association's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such state; and (3) other territory in which the savings association was operating on June 27, 1934

(B) *Definitions*. For the purpose of this section the term *State* includes the District of, Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and a county, parish or similar political subdivision of a State is the unit of "territory"in which the savings association was operating on June 27, 1934.

§ 561.36 Open-end consumer credit.
The term open-end credit means credit as defined in Regulation Z (12 CFR 226.2(a)(20)).

15 USCS. 45 Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

15 USCS Section 1125 False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person..... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same

manner and to the same extent as any non governmental entity.

15 USCS. 1692e False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of - (A) the character, amount, or legal status of any debt;

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or *which creates a false impression as to its source, authorization, or approval.*

15 USCS. 1692f Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

18 USCS. 241 Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State in the free exercise or enjoyment of any right or privilege secured to him by the

Constitution or laws of the United States, or because of his having so exercised the same; They shall be fined under this title or imprisoned not more than ten years, or both;

18 USCS. 242 Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any person in any State to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,..... or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race shall be fined under this title or imprisoned not more than one year, or both;

18 USCS. 245 Federally protected activities

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with -

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from - (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States; (E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been (B) participating in or enjoying any benefit service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from -

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or (B) affording another person or class of persons opportunity or protection to so participate;

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined under this title, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under this title, or imprisoned not more than ten years, or both;

18 USCS. 1001 Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be

fined under this title or imprisoned not more than five years, or both.

18 USCS. 1018 Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

18 USCS. 1341 Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, ... or procure for unlawful use any counterfeit .... or other article, ... for the purpose of executing such scheme or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both.

18 USCS 1343 Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, ... transmits or causes to be transmitted by means of wire, ... in

interstate or foreign commerce, any writings, for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both.

18 USCS. 1505 . Obstruction of proceedings before departments, agencies, and committees

Whoever corruptly, ... communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States .....Shall be fined under this title or imprisoned not more than five years, or both.

18 USCS 1512 Tampering with a witness, victim, or an informant

(b) Whoever knowingly uses intimidation or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to - (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to - (A) withhold a record, document, or other object, from an official proceeding; (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; (C) to produce a record, document, or other object, in an official proceeding; (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person

from (1) attending or testifying in an official proceeding; shall be fined under this title or imprisoned not more than one year, or both.

(e) For the purposes of this section (1) an official proceeding need not be pending or about to be instituted at the time of the offense; and (2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

18 USCS 1513. Retaliating against a witness, victim, or an informant

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for -

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer; or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) There is extraterritorial Federal jurisdiction over an offense under this section.

18 USCS Sec. 1515. Definitions for certain provisions; general provision

(a) As used in sections 1512 and 1513 of this title and in this section - (1) the term "official proceeding" means - (A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Court of Federal Claims,

18 USCS. 1621 Perjury generally

Whoever -(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 USCS. 1622 Subornation of perjury
Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

18 USCS 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if (1) each declaration was material to the point in question, and (2) each declaration was made within the period of the statute of limitations for the offense charged under this section. In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.
(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such

admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.
(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

18 USCS 1951 Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article..... in commerce, by extortion or attempts or conspires so to do....in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section (2) **The term "extortion"** means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, or fear, or under color of official right.

(3) The term **"commerce"** means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

The words **"attempts or conspires so to do"** were substituted for sections 3 and 4 of the 1946 act, omitting as unnecessary the words "participates in an attempt" and the words "or acts in concert with another or with others", in view of section 2 of this title which makes any person who

participates in an unlawful enterprise or aids or assists the principal offender, or does anything towards the accomplishment of the crime, a principal himself.

18 USCS. 1952 Interstate and foreign travel or transportation in aid of racketeering enterprises
(a) Whoever uses the mail or any facility in interstate or foreign commerce, with intent to -
(1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform - (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; (2) extortion in violation of the laws of the State in which committed (3) (ii) the term "State" includes a State of the United States,

18 USCS 1961 Sec. 1961. Definitions
As used in this chapter -

(1) "racketeering activity" means **(A)** any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, **extortion,** .....which is chargeable under State law and punishable by imprisonment for more than one year; **(B)** any act which is indictable under any of the following provisions of title 18, United States Code: ..... section1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering),

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91-452 provided in part that: "The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act (see Short Title note above) to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by

providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

18 USCS. 1962 Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 USCS. 1964 Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain **violations of section 1962 of** this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any

interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962.

28 USCS 2106 Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 USCS. 2254 State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in

custody in violation of the Constitution or laws or treaties of the United States.

28 USCS 2671 Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States. "Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation. "Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

39 USCS. 3009 . Mailing of unordered merchandise
(a) **Except for** (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.

(b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may

be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

(c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

42 USCS. 1981

(a) Statement of equal rights..... All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(c) Protection against impairment...The rights protected by this section are protected against impairment by non governmental discrimination and impairment under color of State law.

42 USCS 1983 Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CODIFICATION

R.S. Sec. 1979 derived from act Apr. 20, 1871, ch. 22, Sec. 1, 17 Stat. 13.

42 USCS 1985 Conspiracy to interfere with civil rights
(2) Obstructing justice; intimidating party, witness, or juror if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges....If two or more persons in any State or Territory conspire ..for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; .....or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by intimidation

.....or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

N. Y. Constitution-Article 1; Section § 2. [Trial by jury; how waived]

Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. The legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death, by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense. The legislature may enact laws, not inconsistent herewith, governing the form, content, manner and time of presentation of the instrument effectuating such waiver.

N. Y. Constitution- Article 1, Section § 11. [Equal protection of laws; discrimination in civil rights prohibited]

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

N. Y. S. Rules & Regulations

22 NYCRR § 604.1. Obligation of attorneys and judges

(a) **Application of rules.** This Part shall apply to all actions and proceedings, civil and criminal, in courts subject to the jurisdiction of the Appellate Division of the Supreme Court in this Judicial Department. It is intended to supplement but not to supersede, the code of professional responsibility as adopted by the New York State Bar Association and the rules governing judicial conduct as promulgated by the Administrative Board of the Judicial Conference. In the event of any conflict between the provisions of this Part and the code of professional responsibility or the rules governing judicial conduct, the code of professional responsibility and the rules governing judicial conduct shall prevail.

(d) **Obligation of the attorney.**

(1) The attorney is both an officer of the court and an advocate. It is his professional obligation to conduct his case courageously, vigorously, and with all the skill and knowledge he possesses. It is also his obligation to uphold the honor and maintain the dignity of the profession. He must avoid disorder or disruption in the courtroom, and he must maintain a respectful attitude toward the court. In all respects the attorney is bound, in court and out, by the provisions of the code of professional responsibility.

(e) **Obligations of the judge.**

(1) In the administration of justice, the judge shall safeguard the rights of the parties and the interests of the public. The judge at all times shall be dignified, courteous, and considerate of the parties, attorneys, jurors, and witnesses. In the performance of his duties and in the maintenance of proper court decorum the judge is in all respects bound by the rules governing judicial conduct.

(2) The judge shall use his judicial power to prevent disruptions of the trial.

(3) A judge before whom a case is moved for trial shall preside at such trial unless he is satisfied, upon challenge, or *sua sponte*, that he is unable to serve with complete impartiality, in fact or appearance, with regard to the matter, or parties in question.

(4) Where the judge deems it appropriate in order to preserve or enhance the dignity, order and decorum of the proceedings, he shall prescribe and make known the rules relating to conduct which the parties, attorneys, witnesses and others will be expected to follow in the courtroom.

(5) The judge should be the exemplar of dignity and impartiality. He shall suppress his personal predilections, control his temper and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he shall do so in a firm and polite manner, limiting his comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining

from unnecessary disparagement of persons or issues.

(6) The judge is not relieved of these obligations by what he may regard as a deficiency in the conduct of any attorney who appears before him; nor is he relieved of these obligations by what he believes to be the moral, political, social, or ideological deficiencies of the cause of any party.

22 NYCRR 1200.. Code of Professional Conduct & Responsibility

DR 1-102. Misconduct

A. A lawyer shall not:

1. Violate a Disciplinary Rule.

2. Circumvent a Disciplinary Rule through actions of another.

3. Engage in illegal conduct involving moral turpitude.

4. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

5. Engage in conduct that is prejudicial to the administration of justice.

6. Unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment, on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation. Where there is available a tribunal of competent jurisdiction, other than a Departmental Disciplinary Committee, a complaint of professional misconduct based on unlawful discrimination shall be brought before such tribunal in the first

instance. A certified copy of a determination by such a tribunal, which has become final and enforceable, and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding.

7. In domestic relations matters, begin a sexual relationship with a client during the course of the lawyer's representation of the client.

8. Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

DR 1-103. Disclosure of Information to Authorities A. A lawyer possessing knowledge, (1) not protected as a confidence or secret, or (2) not gained in the lawyer's capacity as a member of a bona fide lawyer assistance or similar program or committee, of a violation of section 1200.3 of this Part that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness in other respects as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B. A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers and judges.

DR 1-104. Responsibilities of a Supervisory Lawyer A. A lawyer shall be responsible for a violation of the Disciplinary Rules by another lawyer or for conduct of a non-lawyer employed or retained by or associated with the lawyer that

would be a violation of the Disciplinary Rules if engaged in by a lawyer if:

1. The lawyer orders the conduct; or

2. The lawyer has supervisory authority over the other lawyer or the non-lawyer, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

DR 7-101. Representing a Client Zealously

A. A lawyer shall not intentionally:

1. Fail to seek the lawful objectives of the client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice in the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

2. Fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under DR 2-110, DR5-102, and DR 5-105.

3. Prejudice or damage the client during the course of the professional relationship, except as required under DR 7-102(B).

B. In the representation of a client, a lawyer may:

1. Where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

2. Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102. Representing a Client Within the Bounds of the Law

A. In the representation of a client, a lawyer shall not:

1. File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

2. Knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

3. Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

4. Knowingly use perjured testimony or false evidence.

5. Knowingly make a false statement of law or fact.

6. Participate in the creation or preservation of evidence when he lawyer knows or it is obvious that the evidence is false.

7. Counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent.

8. Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

B. A lawyer who receives information clearly establishing that:

1. The client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a confidence or secret.

2. A person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-106. Trial Conduct

A. A lawyer shall not disregard or advise the client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

B. In presenting a matter to a tribunal, a lawyer shall disclose:

1. Controlling legal authority known to the lawyer to be directly adverse to the position of the client and which is not disclosed by opposing counsel.

2. Unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

C. In appearing as a lawyer before a tribunal, a lawyer shall not:

1. State or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

2. Ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

3. Assert personal knowledge of the facts in issue, except when testifying as a witness.

4. Assert a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, upon analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

5. Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the intent not to comply.

6. Engage in undignified or discourteous conduct which is degrading to a tribunal.

7. Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-110. Contact with Officials

A. A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal except as permitted

by Section C(4) of Canon 5 of the Code of Judicial Conduct, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Section B(2) under Canon 7 of the Code of Judicial Conduct.

B. In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

1. In the course of official proceedings in the cause.

2. In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to an adverse party who is not represented by a lawyer.

3. Orally upon adequate notice to opposition counsel or to an adverse party who is not represented by a lawyer.

4. As otherwise authorized by law, or by Section A(4) under Canon 3 of the Code of Judicial Conduct.

DR 8-101. Action as a Public Official

A. A lawyer who holds public office shall not:

1. Use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest.

2. Use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

3. Accept any thing of value from any person when the lawyer

knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

DR 9-101. Avoiding Even the Appearance of Impropriety.

A. A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

B. Except as law may otherwise expressly permit:

1. A lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, and no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

a. The disqualified lawyer is effectively screened from any participation, direct or indirect, including discussion, in the matter and is apportioned no part of the fee therefrom; and

b. There are no other circumstances in the particular representation that create an appearance of impropriety.

2. A lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may knowingly undertake or continue representation in the matter only if the disqualified lawyer is effectively screened from any nonparticipation, direct or indirect, including discussion, in the matter and is

apportioned no part of the fee therefrom.

3. A lawyer serving as a public officer or employee shall not:

a. Participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

b. Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

C. A lawyer shall not state or employ that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

D. A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.

DEFINITIONS

As used in the Disciplinary Rules of the Code of Professional Responsibility:

1. "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

2. "Law firm" includes, but is not limited to, a professional legal corporation, the legal department of a corporation or other organization and a legal services organization.

3. "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

4. "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

5. "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

6. "Tribunal" includes all courts and all other adjudicatory bodies. A tribunal shall be deemed "available" when it would have jurisdiction to hear a complaint, if timely brought.

7. "Bar association" includes a bar association of specialists as referred to in DR 2-105(B).

8. "Qualified legal assistance organization" means an office or organization of one of the four types listed in DR 2-103(D)(1) through (4), inclusive, that meets all the requirements thereof.

9. "Fraud" does not include conduct, although characterized as fraudulent by statute or administrative rule, which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

N. Y. Banking Law § 669.

Unauthorized use of the term "bank" or "trust company"

Any person not authorized by the superintendent of banks, who:

1. Uses an office sign at the place where his business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank or trust company.

Is guilty of a misdemeanor; provided, however, that nothing in this section shall be deemed to prevent a bank holding company from using any corporate name it is duly authorized to use under subdivision (b) of section three hundred two of the business corporation law.

N. Y. Business Corporation Law § 1312.
Actions or special proceedings by unauthorized foreign corporations

(a) A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees *and taxes imposed under the tax law or any related statute, as defined in section eighteen hundred of such law, as well as penalties and interest charges related thereto, accrued against the corporation.* This prohibition shall apply to any successor in interest of such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to do business in this state shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this state.

N. Y. Banking Law Article IX. Licensed Lenders

Section § 340. Doing business without license prohibited

No person *or other entity* shall engage in the business of making loans in the *principal* amount of *twenty-five* thousand dollars or less *for any loan to an individual for personal, family, household, or investment purposes and in a principal amount of fifty thousand dollars or less for business and commercial loans,* and charge, contract for, or receive a greater rate of interest than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this article and without first obtaining a license from the superintendent.

For the purposes of this section, a person *or entity* shall be considered as engaging in the business of making loans in New York, and subject to the licensing and other requirements of this article, if it solicits loans in the *amounts prescribed by this section* within this state and, in connection with such solicitation, makes loans to individuals then resident in this state, except that no person *or entity* shall be considered as engaging in the business of making loans in this state on the basis of isolated, incidental or occasional transactions which otherwise meet the requirements of this section.

Nothing in this article shall apply to licensed collateral loan brokers.

Section § 348. Superintendent authorized to examine

For the purpose of discovering violations of this article or securing information lawfully required hereunder, the superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by the superintendent, investigate the loans and business and examine the books, accounts, records, and files used therein of every licensee. For that purpose the superintendent and duly designated representatives shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony may be required relative to such loans or such business.

§ 349. Licensee's books and records; reports

The licensee shall keep and use in its business such books, accounts, and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein. Preservation of photographic reproduction thereof or records in photographic form, *including an optical disk storage system* and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination

upon request shall constitute compliance with the requirements of this section.

Each licensee shall annually on or before the first day of *April* file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state under authority of this article. Such report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and shall be in the form prescribed by the superintendent who shall make and publish annually a consolidated statement of condition showing the combined assets and liabilities of all licensed lenders. Such consolidated statement of condition shall be based upon the information contained in such reports. In addition to annual reports, the superintendent may require such additional regular or special reports as may *be deemed* necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

Section § 352. Acts required of licensees; acts prohibited

Every licensee shall:

Deliver to the borrower at the time any loan is made or prior to the first advance under an open-end loan agreement a statement, in the English language showing in clear and distinct terms the name and address of the borrower and of the licensee and all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

For each *cash* payment made on account of any *closed-end* loan, give to the person making it at the time the payment is made, a plain and complete receipt *containing the information required by regulations of the superintendent.*

Permit payment to be made in advance in any amount on any loan *agreement* at any time, but the licensee may *initially* apply such payment to all interest *and other charges due* to the date of such payment.

Upon repayment of the loan in full, mark indelibly every obligation signed by the borrower *or a copy thereof* with the word "paid" or "cancelled", and release any mortgage or security agreement no longer securing an obligation of the borrower, restore any pledge, cancel and return any note *or a copy thereof*, and cancel and return any assignment *or a copy thereof* given to the licensee by the borrower. An open-end loan shall not be deemed to be repaid in full for this purpose unless any balance is paid in full and the borrower relinquishes all power to receive further advances under the contract and makes a written request for the release of all collateral for the loan. Every licensee which holds collateral of a borrower shall be fully liable for the return of the collateral upon payment of the indebtedness in full.

No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding.

No licensee shall take any instrument in which blanks are left to be filled in after execution.

N. Y. S. Gen Bus Law § 396. Unlawful selling practices

1. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means of advertisement, or other means of communication, offer for sale any merchandise, commodity, or service, as part of a plan or scheme with the intent, design, or purpose not to sell the merchandise, commodity, or service so advertised at the price stated therein, or with the intent, design or purpose not to sell the merchandise, commodity, or service so advertised. Nothing in this section shall apply to any television or sound radio broadcasting station or to any publisher or printer of a newspaper, magazine, or other form of printed advertising, who broadcasts, publishes, or prints such advertisement.

2. a. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares or merchandise, where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing*; any such goods, wares or merchandise so sent shall be prominently marked upon the container thereof in bold letters as follows: "THIS IS A GIFT. PAYMENT NOT REQUIRED FOR THIS ITEM". The receipt of any goods, wares or merchandise pursuant to an existing membership or club arrangement in which the recipient receives such goods, wares or merchandise at specified intervals or a plan where the recipient agrees to receive such goods, wares or merchandise without further obligation shall not be construed as the receipt of unsolicited goods, wares or merchandise for the purposes of this section.* The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

If after any such receipt deemed to be an unconditional gift under this paragraph a, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorneys' fees and costs to the prevailing party.

b. If a person is a member of an organization which makes retail sales of any goods, wares, or merchandise to its members, and the person notifies the organization of his termination of membership by certified mail, return receipt requested, any unordered goods, wares, or merchandise which are sent to the person after thirty days following execution of the return receipt for the certified letter by the organization, shall for all purposes be deemed unconditional gifts to the person, who may use or dispose of the goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the organization.

If the termination of a person's membership in such organization breaches any agreement with the organization, nothing in this subdivision shall relieve the person from liability for damages to which he might be otherwise subjected to pursuant to law.

The provisions of this paragraph shall not apply to a member of an organization the sole purpose of which is the sale of a specific type of goods, wares or merchandise to its members until the member has fulfilled his initial purchase obligation.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain

the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant is, in fact, violating this section, an injunction may be issued by such court or justice, enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

N. Y. S. General Obligation Law § 5-701. Agreements required to be in writing

a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime;

2. Is a special promise to answer for the debt, default or miscarriage of another person;

3. Is made in consideration of marriage, except mutual promises to marry;

4. [Repealed]

5. Is a subsequent or new promise to pay a debt discharged in bankruptcy;

6. Notwithstanding section 2-201 of the uniform commercial code, if the goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the

name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of the contract or sale, subscribed by the party to be charged therewith;

7, 8. [Repealed]

9. Is a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of any such policy. This provision shall not apply to a policy of industrial life or health or accident insurance.

10. Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein, or of a business opportunity, business, its good will, inventory, fixtures or an interest therein, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest. "Negotiating" includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction. This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a duly licensed real estate broker or real estate salesman.

b. Notwithstanding paragraph one of subdivision a of this section:1. An agreement, promise, undertaking or contract, which is valid in other respects and is otherwise enforceable, is not void for lack of a note, memorandum or other writing and is enforceable by way of action or defense provided that such agreement, promise, undertaking or contract is a

qualified financial contract as defined in paragraph two of this subdivision and (a) there is, as provided in paragraph three of this subdivision, sufficient evidence to indicate that a contract has been made, or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of such qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

2. For purposes of this subdivision, a "qualified financial contract" means an agreement as to which each party thereto is other than a natural person and which is:

(a) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;

(b) a contract (other than a contract for the purchase and sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale or transfer of any commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or any product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;

(c) for the purchase and sale of currency, or interbank deposits denominated in United States dollars;

(d) for a currency option, currency swap or cross-currency rate swap;

(e) for a commodity swap or a commodity option (other than an option contract traded on, or subject to the rules of a contract market or board of trade);

(f) for a rate swap, basis swap, forward rate transaction, or an interest rate option;

(g) for a security-index swap or option or a security (or securities) price swap or option;

(h) an agreement which involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of the foregoing, any cap, floor, collar or similar transaction with respect to a rate, commodity price, commodity index, security (or securities) price, security-index or other price index); or

(i) an option with respect to any of the foregoing.

3. There is sufficient evidence that a contract has been made if:

(a) There is evidence of electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval), admissible in evidence under the laws of this state, sufficient to indicate that in such communication a contract was made between the parties;

(b) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after such contract is made (or such other period of time as the parties may agree in writing) and the sender does not receive, on or before the third business day after such receipt (or such other period of time as the parties may agree in writing), written objection to a material term of the confirmation; for purposes of this subparagraph, a confirmation or an objection

thereto is received at the time there has been actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt which is the time actual receipt by such an individual would have occurred if the receiving party, as an organization, has exercised reasonable diligence; and a "business day" for the purposes of this subparagraph is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract which is the subject of the confirmation;

(c) The party against whom enforcement is sought admits in its pleading, testimony or otherwise in court that a contract was made; or

(d) There is a note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

For purposes of this paragraph evidence of an electronic communication indicating the making therein of a contract or a confirmation, admission, note, memorandum or writing is not insufficient because it omits or incorrectly states one or more material terms agreed upon, so long as such evidence provides a reasonable basis for concluding that a contract was made.

4. For purposes of this subdivision, the tangible written text produced by telex, telefacsimile, computer retrieval or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing and any symbol executed or adopted by a party with the present intention to authenticate a writing shall constitute a signing. The confirmation and notice of objection referred to in subparagraph (b) of paragraph three of this subdivision may

be communicated by means of telex, telefacsimile, computer or other similar process by which electronic signals are transmitted by telephone or otherwise, provided that a party claiming to have communicated in such a manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other party as set forth in subparagraph (b) of paragraph three of this subdivision.

N. Y. S. Civil Practice Laws & Rules

CPLR § 213. Actions to be commenced within six years; where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder based on fraud

The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law;

2. an action upon a contractual obligation or liability, express or implied, except as provided in section two hundred thirteen-a of this article or article 2 of the uniform commercial code *or article 36-B of the general business law*;

3. an action upon a sealed instrument;

4. an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein;

5. an action by the state based upon the spoliation or other misappropriation of public property; the time within which the action must be commenced shall be computed from discovery by the state of the facts relied upon;

6. an action based upon mistake;

7. an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith.

8. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

Rule 2215. Relief demanded by other than moving party

At least three days prior to the time at which the motion is noticed to be heard, a party may serve upon the moving party a notice *of cross-motion* demanding relief, with or without supporting papers. Relief in the alternative or of several different types may be demanded; relief need not be responsive to that demanded by the moving party.

CPLR § 2218. Trial of issue raised on motion

The court may order that an issue of fact raised on a motion shall be separately tried by the court or a referee. **If the issue is triable of right by jury,** the court shall give the parties an opportunity to demand a jury trial of such issue. Failure to make such demand within the time limited by the court, or, if

no such time is limited, before trial begins, shall be deemed a waiver of the right to trial by jury. An order under this rule shall specify the issue to be tried.

Rule § 3013. Particularity of statements generally
Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

§ 3014. Statements

Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation. Reference to and incorporation of allegations may subsequently be by number. Prior statements in a pleading shall be deemed repeated or adopted subsequently in the same pleading whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters. Separate causes of action or defenses shall be separately stated and numbered and may be stated regardless of consistency. Causes of action or defenses may be stated alternatively or hypothetically. A copy of any writing which is attached to a pleading is a part thereof for all purposes.

Rule 3015. Particularity as to specific matters

(a) Conditions precedent.
The performance or occurrence of a condition precedent in a contract need not be pleaded. A denial of performance or occurrence shall be made specifically and with particularity. In case of such denial, the party relying upon the performance or occurrence shall be required to prove on the trial only such

performance or occurrence as shall have been so specified.

(b) Corporate status.
Where any party is a corporation, the complaint shall so state and, where known, it shall specify the state, country or government by or under whose laws the party was created.

(e) License to do business.
Where the plaintiff's cause of action against a consumer arises from the plaintiff's conduct of a business which is required by state or local law to be licensed by the department of consumer affairs of the city of New York, the Suffolk county department of consumer affairs, the Westchester county department of consumer affairs/weight-measures, the county of Rockland, *the county of Putnam* or the Nassau county department of consumer affairs, the complaint shall allege, as part of the cause of action, that plaintiff is duly licensed and shall contain the name and number, if any, of such license and the governmental agency which issued such license; provided, however, that where the plaintiff does not have a license at the commencement of the action the plaintiff may, subject to the provisions of rule thirty hundred twenty-five of this article, amend the complaint with the name and number of an after-acquired license and the name of the governmental agency which issued such license or move for leave to amend the complaint in accordance with such provisions. The failure of the plaintiff to comply with this subdivision will permit the defendant to move for dismissal pursuant to paragraph seven of subdivision (a) of rule thirty-two hundred eleven of this chapter.

§ 3018. Responsive pleadings

(a) Denials.
A party shall deny those statements known or believed by him

to be untrue. He shall specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial. All other statements of a pleading are deemed admitted, except that where no responsive pleading is permitted they are deemed denied or avoided.

(b) Affirmative defenses
A party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading such as arbitration and award, collateral estoppel, culpable conduct *claimed* in diminution of damages *as set forth in article fourteen-A,* discharge in bankruptcy, facts showing illegality either by statute or common law, fraud, infancy or other disability of the party defending, payment, release, res judicata, statute of frauds, or statute of limitation. The application of this subdivision shall not be confined to the instances enumerated.

CPLR Rule 3212. Motion for summary judgment
(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined*; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.*

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all

the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

(c) Immediate trial. If it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages, or if the motion is based on any of the grounds enumerated in subdivision (a) or (b) of rule 3211, the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion, before a referee, before the court, or before the court and a jury, whichever may be proper.

(d) [Repealed]

(e) Partial summary judgment; severance. In a matrimonial action summary judgment may not be granted in favor of the non-moving party. In any other action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action;

or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

(g) Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.

CPLR Rule 4511. Judicial notice of law

(a) When judicial notice shall be taken without request.

Every court shall take judicial notice without request of the common law, constitutions and public statutes of the United States and of every state, territory and jurisdiction of the United States and of the official compilation of codes, rules and regulations of the state except those that relate solely to the organization or internal management of an agency of the state and of all local laws and county acts.

(b) When judicial notice may be taken without request; when it shall be taken on request.

Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice.

(c) Determination by court; review as matter of law.
Whether a matter is judicially noticed or proof is taken, every matter specified in this section shall be determined by the judge or referee, and included in his findings or charged to the jury. Such findings or charge shall be subject to review on appeal as a finding or charge on a matter of law.

(d) Evidence to be received on matter to be judicially noticed.
In considering whether a matter of law should be judicially noticed and in determining the matter of law to be judicially noticed, the court may consider any testimony, document, information or argument on the subject, whether offered by a party or discovered through its own research. Whether or not judicial notice is taken, a printed copy of a statute or other written law or a proclamation, edict, decree or ordinance by an executive contained in a book or publication, purporting to have been published by a government or commonly admitted as evidence of the existing law in the judicial tribunals of the

jurisdiction where it is in force, is prima facie evidence of such law and the unwritten or common law of a jurisdiction may be proved by witnesses or printed reports of cases of the courts of the jurisdiction.

CPLR Rule 4518. Business records

(a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

(b) Hospital bills. A hospital bill is admissible in evidence under this rule and is prima facie evidence of the facts contained, provided it bears a certification by the head of the hospital or by a responsible employee in the controller's or accounting office that the bill is correct, that each of the items was necessarily supplied and that the amount charged is reasonable. This subdivision shall not apply to any proceeding in a surrogate's court nor in any action instituted by or on behalf of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, except that in a proceeding pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital, such certified hospital bills

are prima facie evidence of the fact of services and of the reasonableness of any charges which do not exceed the comparable charges made by the hospital in the care of workmen's compensation patients.

(c) Other records. All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician. Where a hospital record is in the custody of a warehouse, or "warehouseman" as that term is defined by paragraph (h) of subdivision one of section 7-102 of the uniform commercial code, pursuant to a plan approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the commissioner, or order or resolution of the governing body or official of the hospital, and (ii) that the record has been in the exclusive custody of such warehouse or warehousemen since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any warehouseman providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and the warehouseman is authorized to assess and collect a reasonable charge for providing the certification described by this subdivision.

(d) Any records or reports relating to the administration and

analysis of a blood genetic marker or DNA test administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act are admissible in evidence under this rule and are prima facie evidence of the facts contained provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state or by an employee delegated for that purpose, or by a qualified physician. If such record or report relating to the administration and analysis of a blood genetic marker or DNA test or tests administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act indicates at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall, if unrebutted, establish the paternity of and liability for the support of a child pursuant to articles four and five of the family court act.

(e) Notwithstanding any other provision of law, a record or report relating to the administration and analysis of a blood genetic marker or DNA test certified in accordance with subdivision (d) of this rule and administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act is admissible in evidence under this rule without the need for foundation testimony or further proof of authenticity or accuracy unless objections to the record or report are made in writing no later than twenty days before a hearing at which the record or report may be introduced into evidence or thirty days after receipt of the test results, whichever is earlier.

(f) Notwithstanding any other provision of law, records or reports of support payments and disbursements maintained pursuant to title six-A of article three of the social services law by the department of social services or the fiscal agent

under contract to the department for the provision of centralized collection and disbursement functions are admissible in evidence under this rule, provided that they bear a certification by an official of a social services district attesting to the accuracy of the content of the record or report of support payments and that in attesting to the accuracy of the record or report such official has received confirmation from the department of social services or the fiscal agent under contract to the department for the provision of centralized collection and disbursement functions pursuant to section one hundred eleven-h of the social services law that the record or report of support payments reflects the processing of all support payments in the possession of the department or the fiscal agent as of a specified date, and that the document is a record or report of support payments maintained pursuant to title six-A of article three of the social services law. If so certified, such record or report shall be admitted into evidence under this rule without the need for additional foundation testimony. Such records shall be the basis for a permissive inference of the facts contained therein unless the trier of fact finds good cause not to draw such inference.

Rule 5015. Relief from judgment or order

(a) On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or

3. fraud, misrepresentation, or other misconduct of an adverse party; or

4. lack of jurisdiction to render the judgment or order; or

(d) Restitution. Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

Rule 5224. Subpoena; procedure

(a) Kinds and service of subpoena.
Any or all of the following kinds of subpoenas may be served:

3. an information subpoena, accompanied by a copy and original of written questions and a prepaid, addressed return envelope. Service of an information subpoena may be made by registered or certified mail, return receipt requested. Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information, if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven days after receipt.

§ 8303-a. [As amended, L 1986, ch 220] Costs upon frivolous claims and counterclaims in actions to recover damages for personal injury, injury to property or wrongful death [As amended, L 1986, ch 220]

(a) If in *an* action *to recover damages for personal injury, injury to property or wrongful death,* an action or claim is

commenced or continued by a plaintiff or a counterclaim, defense or cross claim is commenced or continued by a defendant that is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs and reasonable attorney's fees not exceeding ten thousand dollars.

(b) The costs and fees awarded under subdivision (a) of this section shall be assessed either against the party bringing the action, claim, cross claim, defense or counter-claim or against the attorney for such party, or against both, as may be determined by the court, based upon the circumstances of the case. Such costs and fees shall be in addition to any other judgment awarded to the successful party.

(c) In order to find the action, claim, counterclaim, defense or cross claim to be frivolous under subdivision (a) of this section, the court must find one or more of the following:

(i) the action, claim, counterclaim, defense or cross claim was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another;

(ii) the action, claim, counterclaim, defense or cross claim was commenced or continued in bad faith without any reasonable basis in law or fact and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action, claim, counterclaim, defense or cross claim was promptly discontinued when the party or the attorney learned or should have learned that the action, claim, counterclaim, defense or cross claim lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

New York Judiciary Law

§ 36. Personal assistants to judges and justices

1. Notwithstanding any other provisions of law, each justice of the supreme court may appoint and at pleasure remove one law clerk and one secretary, subject to standards and administrative policies promulgated pursuant to section twenty-eight of article six of the constitution.

2. Should a judge or justice of the unified court system cease to hold office for any reason other than expiration of his term, his personal assistants shall continue in office until a successor is appointed or elected to fill such vacancy. Until such vacancy is filled, the chief administrator of the courts shall determine the functions to be performed by such personal assistants.

NY Jud § 140-b. General jurisdiction of supreme court

The general jurisdiction in law and equity which the supreme court possesses under the provisions of the constitution includes all the jurisdiction which was possessed and exercised by the supreme court of the colony of New York at any time, and by the court of chancery in England on the fourth day of July, seventeen hundred seventy-six, with the exceptions, additions and limitations created and imposed by the constitution and laws of the state. Subject to those exceptions and limitations the supreme court of the state has all the powers and authority of each of those courts and may exercise them in like manner.

§ 147-a. Powers of justice of supreme court

Any justice of the supreme court has power to hold a special

or trial term of the supreme court in any county for the whole or any portion of the term, and to act upon any business which regularly comes before the term in which he is sitting, except where he is personally disqualified from sitting, in a particular action or special proceeding. Each justice, at all reasonable times, when not engaged in holding court, must transact such judicial business as may be done out of court.

§ 165-b. Power of supreme court justices in Rockland county to appoint law stenographers and typists

The justice or justices of the supreme court residing in Rockland county, or a majority of them, may appoint and at pleasure remove and prescribe the duties of a confidential law stenographer and typist, who shall receive such compensation as may be fixed by the board of supervisors of such county. Such compensation shall be a charge against such county and shall be paid by the treasurer thereof in monthly installments upon the certificate of such justice or justices, or a majority of them.

§ 173-b. Power of supreme court justices of the eight [eighth] judicial district to appoint a confidential law assistant to such justices

The justices of the supreme court of the eighth judicial district, or a majority of them, may appoint and at pleasure remove and prescribe the duties of a confidential law assistant to such justices. Such confidential law assistant shall be an attorney and counselor at law and shall receive such salary as shall be fixed by such justices, or a majority of them. Such salary shall be audited by the state comptroller and paid by the state department of taxation and finance in equal semi-monthly installments when certified to such comptroller

by a justice of the supreme court of the eighth judicial district. Such department shall apportion the amount of such salary among the counties of the eighth judicial district. Such counties shall reimburse the state therefor. The time and method of such apportionment and the time and method of such reimbursement shall be as specified in section seventy-four of this chapter.

§ 197. Appointment of confidential clerks by county judges of Kings, Queens, Erie, Monroe, Nassau, Onondaga, Rockland, Dutchess and Saint Lawrence counties and by special county judge of Erie county

Each of the county judges of the counties of Kings, Queens, Erie, Monroe, Nassau, Onondaga, Rockland, Dutchess and Saint Lawrence shall, and the special county judge of the county of Erie may, appoint and at pleasure remove, a confidential clerk. Such clerks shall be exempt from competitive examination, and their fitness and qualifications for the office shall be approved by the judge making the appointment.

§ 251. Clerks in courts of record within the territory of the first, second, tenth and eleventh judicial districts not to be appointed referees, receivers, or commissioners

No person holding the office of clerk, deputy clerk, special deputy clerk, assistant special deputy clerk, or assistant in the clerk's office, of a court of record within the first, second, tenth and eleventh judicial districts or territory comprising the same, shall hereafter be appointed by any court or judge, a referee, receiver or commissioner; except that a person holding such office who is an attorney in good standing admitted to practice in the state may be appointed as a referee to serve without fee where authorized by any provision of the

civil practice law and rules or any other law.

§ 251-a. Confidential clerks to justices of supreme court not to be appointed referees, receivers or commissioners

No person holding the office of confidential clerk or law secretary to a justice of the supreme court shall hereafter be appointed by any court or judge in any action or proceeding instituted in the supreme court, a referee, receiver or commissioner, except that in uncontested matrimonial actions, a confidential clerk or law secretary who is an attorney in good standing admitted to practice in the state may be appointed by an administrative judge to serve without fee as a referee for the purpose of hearing and reporting to the court.

§ 487. Misconduct by attorneys

An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

N Y Public Officers Law § 17. Defense and indemnification of state officers and employees

1. (a) As used in this section, unless the context otherwise requires the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the state, *including clinical practice pursuant to subdivision fourteen of section two hundred six of the public health law,* whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice pursuant to title eight of the education law or title II-A of the public health law.

2. (a) Upon compliance by the employee with the provisions of subdivision four of this section, the state shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties; or which is brought to enforce a provision of section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code and the act or omission underlying the action occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the state.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by the attorney general, provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding *whenever the attorney general determines based upon his investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate,* or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The attorney general shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the comptroller. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(c) Where the employee delivers process and a request for a defense to the attorney general as required by subdivision

four of this section, the attorney general shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph (b) of subdivision two of this section on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

3. (a) The state shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, or shall pay such judgment or settlement; provided, that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties; the duty to indemnify and save harmless or pay prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing on the part of the employee.

(b) An employee represented by the attorney general or by private counsel pursuant to this section shall cause to be submitted to the head of the department, commission, division, office or agency in which he is employed any proposed settlement which may be subject to indemnification or payment by the state and if not inconsistent with the provisions of this section such head of the department, commission, division, office or agency in which he is employed shall certify such settlement, and submit such settlement and certification to the attorney general. The attorney general shall review such proposed settlement as to form and amount, and shall give his approval if in his judgment the settlement is in the best interest of the state. Nothing in this subdivision shall be construed to authorize the state to indemnify and save harmless or pay an employee with respect to a settlement not so reviewed and approved by the

attorney general.

(c) Nothing in this subdivision shall authorize the state to indemnify or save harmless an employee with respect to fines or penalties, or money recovered from an employee pursuant to article seven-a of the state finance law; provided, however, that the state shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States. The attorney general shall promulgate such rules and regulations as are necessary to effectuate the purposes of this subdivision.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the head of the department, commission, division, office or agency in which he is employed; and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such head of the department, commission, division, office or agency. If the attorney general concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the comptroller. On or before January fifteenth the comptroller, in consultation with the department of law and other agencies as may be appropriate, shall submit to the governor and the legislature an annual accounting of judgments, settlements, fees, and litigation expenses paid pursuant to this section during the preceding and current fiscal years. Such accounting shall include, but

not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year.

4. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (i) delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the state provide for his defense pursuant to this section.

5. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

6. This section shall not in any way affect the obligation of any claimant to give notice to the state under section ten of the court of claims act or any other provision of law.

7. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

8. The provisions of this section shall apply to all actions and proceedings pending upon the effective date thereof or

thereafter instituted.

9. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the state or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

10. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

11. The provisions of this section shall not apply to physicians who are subject to the provisions of the plan for the management of clinical practice income as set forth in the policies of the board of trustees, title 8, New York codes [,] [11] rules and regulations, regarding any civil action or proceeding alleging some professional malpractice in any state or federal court arising out of the physician's involvement in clinical practice as defined in that plan.

New York State Penal Code

§ 105.00. Conspiracy in the sixth degree

A person is guilty of conspiracy in the sixth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the sixth degree is a class B misdemeanor.

§ 105.05. Conspiracy in the fifth degree

A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or

2. a crime be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the fifth degree is a class A misdemeanor.

§ 105.10. Conspiracy in the fourth degree

A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting:

1. a class B or class C felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or

Conspiracy in the fourth degree is a class E felony.

§ 105.15. Conspiracy in the second degree

A person is guilty of conspiracy in the second degree when, with intent that conduct constituting a class A felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the second degree is a class B felony.

§ 105.30. Conspiracy; no defense

It is no defense to a prosecution for conspiracy that, owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the agreement or the object conduct or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of conspiracy or the object crime, one or more of the defendant's co-conspirators could not be guilty of conspiracy or the object crime.

Article 175. Offenses Involving False Written Statements

§ 175.00. Definitions of terms

The following definitions are applicable to this article:

1. "Enterprise" means any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity.

2. "Business record" means any writing or article, *including computer data or a computer program,* kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

3. "Written instrument" means any instrument or article, *including computer data or a computer program,* containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

§ 175.05. Falsifying business records in the second degree
A person is guilty of falsifying business records in the second degree when, with intent to defraud, he:

1. Makes or causes a false entry in the business records of an enterprise; or

2. Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

3. Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or

4. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Falsifying business records in the second degree is a class A misdemeanor.

Where justice of peace has imposed and collected fines for violations of Vehicle and Traffic Law and has wilfully failed to pay same over to state in accordance with §73 of this law, he may be prosecuted under this section. 1933 Ops Atty Gen 175.

§ 175.10. Falsifying business records in the first degree
A person is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.

Falsifying business records in the first degree is a class E

felony.

§ 175.30. Offering a false instrument for filing in the second degree

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

§ 175.35. Offering a false instrument for filing in the first degree

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision thereof, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the first degree is a class E felony.

§ 190.50. Unlawful collection practices

A person is guilty of unlawful collection practices when, with intent to enforce a claim or judgment for money or property, he knowingly sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance,

simulates a summons, complaint, court order or process, or an insignia, seal or printed form of a federal, state or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

Unlawful collection practices is a class B misdemeanor.

§ 190.60. Scheme to defraud in the second degree

1. A person is guilty of a scheme to defraud in the second degree when he engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons.

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the second degree is a class A misdemeanor.

§ 190.65. Scheme to defraud in the first degree

1. A person is guilty of a scheme to defraud in the first degree when he: (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than

one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons.

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the first degree is a class E felony.

§ 195.00. Official misconduct

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

§ 195.05. Obstructing governmental administration in the second degree

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation,

physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service.

Obstructing governmental administration is a class A misdemeanor.

§ 195.07. Obstructing governmental administration in the first degree

A person is guilty of obstructing governmental administration in the first degree when he commits the crime of obstructing governmental administration in the second degree by means of interfering with a telecommunications system thereby causing serious physical injury to another person.

Obstructing governmental administration in the first degree is a class E felony.

§ 200.20. Rewarding official misconduct in the second degree

A person is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct in the second degree is a class E felony.

§ 200.22. Rewarding official misconduct in the first degree

A person is guilty of rewarding official misconduct in the first

degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Rewarding official misconduct in the first degree is a class C felony.

§ 200.25. Receiving reward for official misconduct in the second degree

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

§ 200.27. Receiving reward for official misconduct in the first degree

A public servant is guilty of receiving reward for official misconduct in the first degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Receiving reward for official misconduct in the first degree is a class C felony.

§ 205.50. Hindering prosecution; definition of term

As used in sections 205.55, 205.60 and 205.65, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person who he knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime, or with intent to assist a person in profiting or benefitting from the commission of a crime, he:

1. Harbors or conceals such person; or

2. Warns such person of impending discovery or apprehension; or

3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

6. Aids such person to protect or expeditiously profit from an advantage derived from such crime.

§ 205.55. Hindering prosecution in the third degree

A person is guilty of hindering prosecution in the third

degree when he renders criminal assistance to a person who has committed a felony.

Hindering prosecution in the third degree is a class A misdemeanor.

§ 205.60. Hindering prosecution in the second degree

A person is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class B or class C felony.

Hindering prosecution in the second degree is a class E felony.

§ 205.65. Hindering prosecution in the first degree

A person is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed a class A felony, knowing or believing that such person has engaged in conduct constituting a class A felony.

Hindering prosecution in the first degree is a class D felony.

§ 210.00. Perjury and related offenses; definitions of terms

The following definitions are applicable to this article:

1. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

2. "Swear" means to state under oath.

3. "Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding

and to administer the oath or cause it to be administered.

4. "Oath required by law." An affidavit, deposition or other subscribed written instrument is one for which an "oath is required by law" when, absent an oath or swearing thereto, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.

5. "Swear falsely." A person "swears falsely" when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a subscribed written instrument. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with intent that it be uttered or published as true.

6. "Attesting officer" means any notary public or other person authorized by law to administer oaths in connection with affidavits, depositions and other subscribed written instruments, and to certify that the subscriber of such an instrument has appeared before him and has sworn to the truth of the contents thereof.

7. "Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.

§ 210.05. Perjury in the third degree

A person is guilty of perjury in the third degree when he swears falsely.

Perjury in the third degree is a class A misdemeanor.

§ 210.10. Perjury in the second degree

A person is guilty of perjury in the second degree when he swears falsely and when his false statement is (a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved.

Perjury in the second degree is a class E felony.

§ 210.15. Perjury in the first degree

A person is guilty of perjury in the first degree when he swears falsely and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a class D felony.

§ 210.20. Perjury; pleading and proof where inconsistent statements involved

Where a person has made two statements under oath which are inconsistent to the degree that one of them is necessarily false, where the circumstances are such that each statement, if false, is perjuriously so, and where each statement was made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged, the inability of the people to establish specifically which of the two statements is the false one does not preclude a prosecution for perjury, and such prosecution may be conducted as follows:

1. The indictment or information may set forth the two statements and, without designating either, charge that one of

them is false and perjuriously made.

2. The falsity of one or the other of the two statements may be established by proof or a showing of their irreconcilable inconsistency.

3. The highest degree of perjury of which the defendant may be convicted is determined by hypothetically assuming each statement to be false and perjurious. If under such circumstances perjury of the same degree would be established by the making of each statement, the defendant may be convicted of that degree at most. If perjury of different degrees would be established by the making of the two statements, the defendant may be convicted of the lesser degree at most.

§ 210.35. Making an apparently sworn false statement in the second degree

A person is guilty of making an apparently sworn false statement in the second degree when (a) he subscribes a written instrument knowing that it contains a statement which is in fact false and which he does not believe to be true, and (b) he intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and (c) such instrument is uttered or delivered with a jurat affixed thereto.

Making an apparently sworn false statement in the second degree is a class A misdemeanor.

§ 210.40. Making an apparently sworn false statement in the first degree

A person is guilty of making an apparently sworn false statement in the first degree when he commits the crime of making an apparently sworn false statement in the second degree, and when (a) the written instrument involved is one

for which an oath is required by law, and (b) the false statement contained therein is made with intent to mislead a public servant in the performance of his official functions, and (c) such false statement is material to the action, proceeding or matter involved.

Making an apparently sworn false statement in the first degree is a class E felony.

§ 210.45. Making a punishable false written statement A person is guilty of making a punishable false written statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable.

Making a punishable false written statement is a class A misdemeanor.

Article 215. Other Offenses Relating to Judicial and Other Proceedings

§ 215.35. Tampering with physical evidence; definitions of terms The following definitions are applicable to section 215.40:

1. "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

2. "Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence may properly be received.

§ 215.40. Tampering with physical evidence

A person is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in an official proceeding or a prospective official proceeding, he (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or

2. Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class E felony.

"Forgery" is not an essential element in establishing violation of this section by one who, charged with forging a particular check, is accused of destroying the instrument so that it could not be used as evidence against him, and defendant's prosecution for violating this section could accordingly not be considered as barred as subjecting him to double jeopardy because the forgery charges against him had been dismissed. People v Trudeau (1963) 40 Misc 2d 854, 243 NYS2d 877.

§ 215.45. Compounding a crime

1. A person is guilty of compounding a crime when:

(a) He solicits, accepts or agrees to accept any benefit upon an agreement or understanding that he will refrain from initiating a prosecution for a crime; or

(b) He confers, or offers or agrees to confer, any benefit upon

another person upon an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

2. In any prosecution under this section, it is an affirmative defense that the benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

Compounding a crime is a class A misdemeanor.

§ 460.20. Enterprise corruption

1. A person is guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he:

(a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity; or

(b) intentionally acquires or maintains any interest in or control of an enterprise by participating in a pattern of criminal activity; or

(c) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise.

2. For purposes of this section, a person participates in a pattern of criminal activity when, with intent to participate in or advance the affairs of the criminal enterprise, he engages in conduct constituting, or, is criminally liable for pursuant to section 20.00 of this chapter, at least three of the criminal acts included in the pattern, provided that:

(a) Two of his acts are felonies other than conspiracy;

(b) Two of his acts, one of which is a felony, occurred within five years of the commencement of the criminal action; and

(c) Each of his acts occurred within three years of a prior act.

3. For purposes of this section, the enterprise corrupted in violation of subdivision one of this section need not be the criminal enterprise by which the person is employed or with which he is associated, and may be a legitimate enterprise.

Enterprise corruption is a class B felony.

Additional Federal and N. Y. State Laws and N. Y. State Rules

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28 USC Rule 201 Judicial Notice of Adjudicative Facts

(a) Scope of rule. - This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. - A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. - A court may take judicial notice, whether requested or not.

(d) When mandatory. - A court shall take judicial notice if

requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. - A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. - Judicial notice may be taken at any stage of the proceeding.

28 USC Rule 302 Applicability of State Law in Civil Actions and Proceedings

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to
which State law supplies the rule of decision is determined in accordance with State law.

28 USC Rule 613 Prior Statements of Witnesses

(a) Examining witness concerning prior statement. -
In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. - Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite

party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

28 USCS § 712 Law clerks and secretaries

Circuit judges may appoint necessary law clerks and secret--aries. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

28 USCS § 715 Staff attorneys and technical assistants

(a) The chief judge of each court of appeals, with the approval of the court, may appoint a senior staff attorney, who shall be subject to removal by the chief judge with the approval of the court.

(b) The senior staff attorney, with the approval of the chief judge, may appoint necessary staff attorneys and secretarial and clerical employees in such numbers as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of staff attorneys exceed the number of positions expressly authorized in an annual appropriation Act. The senior staff attorney may remove such staff attorneys and secretarial and clerical employees with the approval of the chief judge.

(c) The chief judge of the Court of Appeals for the Federal Circuit, with the approval of the court, may appoint a senior technical assistant who shall be subject to removal by the chief judge with the approval of the court.

(d) The senior technical assistant, with the approval of the court, may appoint necessary technical assistants in such number as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of technical assistants in the Court of Appeals for the Federal Circuit exceed the number of circuit judges in regular active service within such circuit. The senior technical assistant may remove such technical assistants with the approval of the court.

22 NYCRR § 202.8. Motion procedure

(a) All motions shall be returnable before the assigned judge, and all papers shall be filed with the court on or before the return date.

(b) Special procedure for unassigned cases. If a case has not been assigned to a judge, the motion shall be made returnable before the court, and a copy of the moving papers, together with a request for judicial intervention, shall be filed with the court, with proof of service upon all other parties, where required by section 202.6, within five days of service upon the other parties. The moving party shall give written notice of the index number to all other parties immediately after filing of the papers. Copies of all responding papers shall be submitted to the court, with proof of service and with the index number set forth in the papers, on or before the return date. The case shall be assigned to a judge as soon as practicable after the filing of the request for judicial intervention pursuant to section 202.6 of this Part, but in no event later than the return date. After assignment to the judge, the court shall provide for appropriate notice to the parties of the name of the assigned judge. Motion papers noticed to be heard in a county other than the county where the venue of the action has been placed by the plaintiff shall

be assigned to a judge in accordance with procedures established by the Chief Administrator.

(c) The moving party shall serve copies of all affidavits and briefs upon all other parties at the time of service of the notice of motion. The answering party shall serve copies of all affidavits and briefs as required by CPLR 2214. Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.

(d) Motion papers received by the clerk of the court on or before the return date shall be deemed submitted as of the return date. The assigned judge, in his or her discretion or at the request of a party, thereafter may determine that any motion be orally argued and may fix a time for oral argument. A party requesting oral argument shall set forth such request in its notice of motion or in its order to show cause or on the first page of the answering papers, as the case may be. Where all parties to a motion request oral argument, oral argument shall be granted unless the court shall determine it to be unnecessary. Where a motion is brought on by order to show cause, the court may set forth in the order that oral argument is required on the return date of the motion.

(e) (1) Stipulations of adjournment of the return date made by the parties shall be in writing and shall be submitted to the assigned judge. Such stipulation shall be effective unless the court otherwise directs. No more than three stipulated adjournments for an aggregate period of 60 days shall be submitted without prior permission of the court. (2) Absent agreement by the parties, a request by any party for an adjournment shall be submitted in writing, upon notice to the other party, to the assigned judge on or before the return date. The court will notify the requesting party whether the adjournment has been granted.

(f) Where the motion relates to disclosure or to a bill of particulars, and a preliminary conference has not been held, the court shall notify all parties of a scheduled date to appear for a preliminary conference, which shall be not more than 45 days from the return date of the motion unless the court orders otherwise, and a form of a stipulation and order, prescribed by the Chief Administrator of the Courts, shall be made available which the parties may sign, agreeing to a timetable which shall provide for completion of disclosure within 12 months, and for a resolution of any other issues raised by the motion. If all parties sign the form and return it to the court before the return date of the motion, such form shall be "so ordered" by the court, and the motion shall be deemed withdrawn. If such stipulation is not returned by all parties, the conference shall be held on the assigned date. Issues raised by the motion and not resolved at the conference shall be determined by the court.

(g) Unless the circumstances require settlement of an order, a judge shall incorporate into the decision an order effecting the relief specified in the decision.

22 NYCRR § 202.48.
Submission of orders, judgments and decrees for signature

(a) Proposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.

(b) Failure to submit the order or judgment timely shall be

deemed an abandonment of the motion or action, unless for good cause shown.

General Obligation Law § 5-332.

Unsolicited and voluntarily sent merchandise deemed unconditional gift

1. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares, or merchandise, where the offer includes the voluntary and unsolicited sending of such goods, wares, or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such goods, wares, or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of such goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the sender.

If after any such receipt deemed to be an unconditional gift under this section, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorney's fees and costs to the prevailing party.

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This Appendix is prepared by

Petitioner -
Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
Tel. (845) 426 2902

(3)

Supreme Court, U.S.
FILED

01 274 AUG 13 2001

OFFICE OF THE CLERK

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

- -against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix B - Conforming to Rule 14.1(i)(i)

Petitioner - Ashok Kashelkar - Pro Se
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59 pp

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In the United States Supreme Court

Case No. 1
Ashok Kashelkar
Plaintiff \ Appellant \ Petitioner

-against-

Harold Y. MacCartney, Jr.; Debora J. Dillon; William R. Watson; Bruce Muldoon; MacCartney, MacCartney, Kerrigan & MacCartney; O'Connor, McGuiness, Conte, Doyle, Olsen & Collins; JOHN DOE No.1; JOHN DOE No.2 JANE DOE No.1; JANE DOE No.2
Defendants \ Appellees \ Respondents

Case No. 2

ASHOK KASHELKAR
Plaintiff \ Appellant \ Petitioner

-against-

RUBIN & ROTHMAN ; JOSEPH LATONA ; RUBIN LONG KEITH ROTHMAN; SCOTT RUMPH; HOUSEHOLD INTERNATIONAL, INC.
HOUSEHOLD RECOVERY SERVICES ; JOHN DOE No.1; JOHN DOE No.2
JANE DOE No.1; JANE DOE No.2

Defendants-Appellees \ Respondents

This submission is by..... Ashok Kashelkar-Pro Se
6 Innington Court
Spring Valley, NY 10977
Tel. (845) 426 2902

List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

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Attorney General O The State Of New York
Charles F. Sanders. Asst. Atty Gen
For Bruce Muldoon
120 Broadway, New York 10271
Tel (212) 416 8594

Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

Cahill, Gordon & Reindel
Joseph Gershman
80 Pine Street, New York NY 10005
Tel (212) 701 3000

Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "Court Orders" of The Court Of Appeals, for the Second Circuit as well as the District Court of Southern District of New York, White Plains, NY in both the cases, are appended, herein.

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This petitioner further states, that, the "seals" of the Courts are reproduced, to the best of my ability and are in BOX formats.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition and conforms to Rule 14.1(i)(i).

Spring Valley, NY

Dated July 22, 2001

Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. (845) 426 2902

"Summary Order" and other orders in "MacCartney matter"..... Case No. 1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventh day of November two thousand.

UNITED STATES COURT OF APPEALS
FILED
NOV.- 7 2000
Roseann B MacKechnie, Clerk
SECOND CIRCUIT

Present:

HONORABLE AMALYA L. KEARSE ,
HONORABLE PIERRE N. LEVAL,
HONORABLE SONIA SOTOMAYOR,
Circuit Judges.

ASHOK KASHELKAR ,
Plaintiff-Appellant, No:00-7090

- v. -

HAROLD Y. MacCARTNEY, JR.; DEBORA J. DILLON; WILLIAM R. WATSON; BRUCE MULDOON; MACCARTNEY, MACCARTNEY, KERRIGAN & MACCARTNEY; O I CONNOR, MCGUINNESS, CONTE, DOYLE, OLESON & COLLINS; JOHN DOE, No. 1; JANE DOE, No. 1; JOHN DOE, No.2; JANE DOE, No.2,

Defendants-Appellees.

Appearing for Appellant: Ashok Kashelkar pro se, Spring Valley, N.Y.

Appearing for Appellees Harold Y. MacCartney, Jr., MacCartney, MacCartney,

Kerrigan & MacCartney: David MacCartney, MacCartney, MacCartney, Kerrigan & MacCartney, Nyack, N.Y.

Appearing for Appellees Dillon, Watson, O'Connor, McGuiness, Conte, Doyle, Oleson & Collins: Robert Sylvan, Garcia & Stallone, Melville, N.Y.

Appearing for Appellee Muldoon: Charles F. Sanders, Ass't Att'y Gen., N.Y., N.Y.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the record from the United States District Court for the Southern District of New York, and was argued by plaintiff pro se, submitted by counsel for defendant Muldoon, and argued by counsel for

the other non-"Doe" defendants.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

We affirm substantially for the reasons stated in Judge McMahon's Order Granting Defendants' Motions To Dismiss And Or For Summary Judgment And Denying in Plaintiff's Motion To Strike Certain Motions By All Defendants Except Bruce Muldoon, dated December 22, 1999, except to the extent that order indicated that claims asserted under the Racketeer Influenced and Corrupt Organizations Act ("RICO") , 18 U.S.C. § 1961 et seq., are subject to a three-year statute of limitations, see Agency Holding Corp. v. Malley-Duff & Associates. Inc., 483 U.S. 143, 156 (1987) (RICO claims governed by four-year statute of limitations) . The district court's other grounds for dismissing plaintiff's RICO claims were correct.

We have considered all of plaintiff's contentions on this appeal and have found in them no basis for reversal. The judgment of the district court is affirmed.

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk

by: Sd_____
RALPH A. ANDERSON,
Deputy Clerk ACTING OPERATIONS MANAGER

Since The Court of Appeals, "affirmed" the District Court Decision\Order and Judgement, for "Substantially the same reason", as the District Court, the District

Court Decision\ Order is appended below.

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. District Court
Filed W. P.
Dec. 22, 1999
S. D. Of N. Y.

ASHOK KASHELKAR, 99 Civ. 5132 (CM)

Plaintiff,

-against-

HAROLD Y. MacCARTNEY, JR.; DEBORA J. DILLON; WILLIAM R. WATSON; BRUCE MULDOON; MACCARTNEY , MACCARTNEY, KERRIGAN & MACCARTNEY; O'CONNOR, MCGUINNESS, CONTE, DOYLE, OLSEN & COLLINS; JOHN DOE, NO.1; JANE DOE, NO.1; JOHN DOE, NO.2; and JANE DOE, NO.2,

Defendants.

----------x

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND/OR FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION TO STRIKE CERTAIN MOTIONS BY ALL DEFENDANTS EXCEPT BRUCE MULDOON

McMahon, J. :

In 1995, plaintiff pro se Ashok Kashelkar filed an action for damages in New York State Supreme Court, Rockland County , against a motorist named Harriet Levine, her husband, and GEICO, their insurer. The action arose out of an accident that occurred in 1992. The law firm of

MacCartney, MacCartney, Kerrigan & MacCartney represented the motorist defendants in that action. At some point in the litigation, cross-motions for summary judgment were filed, with plaintiff serving his motion on July 14, 1995, and the Levines serving theirs on July 20. On July17, Plaintiff wrote to the Court requesting a three-week extension of the return date to August 18 on a motion filed by the MacCartney firm to sever plaintiff s claim against the Levines from his claim against GEICO. In response, attorneys from the MacCartney firm and the firm of O'Connor, McGuinness, Conte, Doyle, Olsen & Collins, which represented GEICO, wrote CJ separate letters to the Court requesting that all pending motions be adjourned until August 18.
The Court appears to have granted those requests, as the parties' subsequently-filed Notices of Cross-Motion included return dates of August 18. Mr. Kashelkar appealed the dismissal ofhis suit through the New York State Unified Court System. Re lost at every turn.

Now Mr. Kashelkar has brought an action in this Court. The gravamen of his complaint is that the MacCartney and O'Connor firms, several attorneys of both, and the judge's law secretary denied him due process of law when they obtained and/or granted an adjournment behind plaintiffs back and effected the dismissal of his negligence complaint - a claim that seems somewhat bewildering in light of the fact that it was plaintiff who initiated the request for an adjournment to August 18. (See Letter dated July 15,1995 from plaintiff to Judge Meehan, MacCartney Exhibit N .) As Mr . Kashelkar stated to this Court at oral argument, his complaint lies not with the fact that his cause of action was dismissed, but rather with the manner in which the loss occurred. (Tr. of Conference dated November 5, 1999, at 4.) Contending that defendants engaged in conspiracies to defraud him of his constitutional and civil rights and his property , he has

brought claims against them under the' Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961; 42 U.S.C. §§ 1981, 1983 and 1985; and the Fourteenth Amendment to the United States Constitution.

All the defendants have moved to dismiss the complaint. Their motions are disposed of as follows:

1. The motion to dismiss by defendant Bruce Muldoon, Law Secretary to the Ron. Robert R. Meehan, is granted. This Court lacks jurisdiction over Mr. Muldoon for actions he performed while acting in his official capacity as the law secretary to a New York State Supreme Court justice, because the State of New York is the real party in interest in such a suit, and the Eleventh Amendment bars suit against the State of New York. In addition, Mr. Kashelkar's challenge to the various rulings, both substantive and procedural, of the court of the Unified Court System of the State of New York in essence asks this Court to review state court decisions, which, of course, it has no power to do (see discussion of the Rooker-Feldman doctrine, below.) In addition, to the extent that plaintiff seeks damages against Mr . Muldoon, his complaint is barred by the doctrine of quasi-judicial immunity, which extends to court officials like Mr. Muldoon the same immunity that is absolutely enjoyed by judges when they exercise their judicial function. In this Circuit, law secretaries to state court judges benefit from quasi-judicial immunity. Oliva v. Heller, 839 F.2d 37,39 (2d Cir. 1988).

Moreover, all claims against Mr. Muldoon are time barred, since even on the most favorable reading of the complaint, plaintiffs claims against Mr. Muldoon arose no later that early 1996, when his negligence case was dismissed by the Rockland County Supreme Court more than three years before this action was filed.

Because the Court lacks jurisdiction to adjudicate this matter on both of these grounds, it need not and should not address the other grounds advanced by Mr. Muldoon in support of his motion to dismiss.

2. The motion to dismiss and/or for summary judgment made by defendants Harold Y. MacCartney, Jr. and the law firm of MacCartney, MacCartney, Kerrigan & MacCartney is granted.

The plaintiff's challenge to the underlying state court decision is jurisdictionally deficient and cannot be entertained by this Court under the so-called Rooker- Feldman doctrine, which precludes federal district courts from reviewing final judgments entered in state court proceedings. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Moreover, because the Second Circuit prohibits district courts from entertaining actions if they are "inextricably intertwined" with a challenge to the merits of an unreviewable state court determination, a plaintiff cannot evade Rooker-Feldman by casting his claim in the guise of a federal civil rights violation. See Davidson v. Garry , 956 F. Supp. 265, 268-69 (E. D. N.Y. [1996), Aff'd 112 F. 3d 503 (2d Cir. 1997). For this reason alone, the complaint must be dismissed against the MacCartney defendants, as the Court is without jurisdiction in this matter. See Fed. R. Civ. P. 12(b)(1).

It also appears from the record before me that plaintiff raised his claims of conspiracy and violation of due process before the state courts, where he lost resoundingly. Under controlling principles of former adjudication, Mr. Kashelkar cannot relitigate those issues now. See Polur v. Raffe, 912 F.2d 52,55 (2d Cir. 1990), cert. denied, 499 U.S. 937 (1991).

Third, the claims are time-barred, for the reasons set forth in connection with Mr. Muldoon ' s motion.

Turning to whether the pleading states a claim on which relief may be granted, which I consider as an alternative ground for dismissal in the event the Court's jurisdictional and former adjudication determinations are deemed erroneous: plaintiffs claims for violations of his civil rights and for denial of due process are dismissed because plaintiff fails to identify any constitutionally protected right that was violated. The filing of an answer containing denials of certain of plaintiff s allegations - the legal effect of which is simply to put a plaintiff to his proof as to each and every element of his claim - is perfectly proper under New York's Civil Practice Law and Rules, as is the filing of any and all affirmative defenses that may turn out to be justified by the facts. Plaintiff has no constitutional right to have motions served in accordance with the deadlines set forth in the CPLR or to have adjournments denied when he opposes them. It is well settled that mere irregularities or errors in a state court proceeding are insufficient to show a purposeful conspiracy to deprive a party of due process of law. See Young v. County of Fulton, 160 F.3d 899,902 (2d Cir. 1998); Skolnick v. Spolar. 317 F.2d 857 (7th Cir. 1963), cert. denied, 375 U.S. 904, rehearing denied, 375 U.S. 960 (1963).

As to the § 1983 claim, the Court notes that the MacCartney defendants are not state actors. They are private attorneys who were defending the interests of a client in an action brought by plaintiff in a state court. Plaintiff alleges no facts that would permit this Court to identify them with the authority of the state. When the complaint is parsed, it alleges no more than that the MacCartney and O'Connor defendants made a motion, wrote a letter to a law . secretary in order to obtain an adjournment and a single return date for all pending

motions, obtained the adjournment and thereafter won the case. This is insufficient as a matter of law to clothe them with the mantle of state actors.

As to the § 1985 claim, plaintiff has neither alleged any conspiratorial act with the particularity required nor set forth any factual allegation to support his conclusion that defendants conspired against him and he lost the case because he was an Indian who practices the Hindu religion. It appears from the record of proceedings in the state court that Mr. Kashelkar lost his case because he refused to submit an affidavit from his son, the driver of the car, setting forth his version of what occurred - this despite being told by Justice Meehan that he must do so or risk dismissal of his claim. Mr. Kashelkar's own allegations preclude him from asserting that he lost his case due to any race-ethnicity-religion based conspiracy.

His claim under § 1981 is also insufficient in that it fails to allege either facts supporting an inference of discriminatory intent or that Mr. Kashelkar was treated differently than white individuals who opposed requests for adjournment or who refused to submit affidavits that would create genuine issues of material fact in opposition to pending motions for summary judgment. Since Mr. Kashelkar's complaint reveals that the true gravamen of his federal action is to attack the merits of the state court adjudication, this Court does not grant him leave to replead, as he cannot "cure" what are incurable defects.

Mr. Kashelkar's alleged RICO violations also suffer from incurable pleading defects. First, he has not alleged that his commercial interests were injured by the alleged conspiracy against him. It has specifically been held that a RICO action does not lie against a state court judge and attorneys for their

alleged conspiracy to deny a party due process. See Hibbard v. Beniamin, Civ. A. No. 90-10361-WF, 1992 WL 300838 (D. Mass. Sep. 21, 1992) (citing Savastano v. Thompson Medical Co., 640 F. Supp. 1081,1087 (S. D. N.Y. 1986)). Nothing in the complaint would support an inference that the damage to plaintiff's car, which was being driven by his son at the time of the accident, related to any commercial interest of plaintiff. Second, plaintiff has not alleged predicate acts sufficient to sustain a RICO claim - the filing of an answer that denies certain of his allegations, the obtaining of an adjournment over plaintiff's opposition, and the dismissal of his action on the merits not qualifying as either mail or wire fraud. See D'Orange v. Feely, 877 F. Supp. 152,156 (S. D. N.Y. 1995); Morin v. Trupin. 711 F. Supp. 97, 104 (S. D. N.Y. 1989). Third, plaintiff does not allege a "pattern" of racketeering activity . Finally, the complaint is insufficiently particular - a defect that, in this particular case, cannot be cured by amendment.(fn1)

3. The O'Connor defendants have also moved for dismissal or summary judgment on the . same grounds as the MacCartney firm. For the reasons set forth above, their motion to dismiss and/or for summary judgment is granted as well.

4. Mr. Kashelkar has belatedly moved to strike the summary judgment motions of all defendants except Bruce Muldoon (who did not file a motion for summary judgment), ostensibly so that he can take discovery pursuant to Fed. R. Civ. P. 56(f). As discovery would not enable Mr. Kashelkar to resurrect any of his claims, which are dismissed pursuant to Rules 12(b)(1) and (6), his motion is denied, without the need for any response by defendants (fn2).

This constitutes the decision and order of the Court.

Dated: December 22, 1999

Sd. Colleen McMahon
U. S. D.J.

Fn1 All of these grounds are fatal defects in plaintiff's pleading, and so dismissal is effected under Fed. R. Civ. P. 12(b)(6). The Court did review the parties' submissions (totaling over afoot of paper), but it is not necessary to treat the motion as one for summary judgment in order to dismiss the action. Nonetheless, Mr. Kashelkar was advised of his responsibilities under Rule 56 and submitted voluminous material in response thereto.

Fn 2 The Court has reviewed Mr. Kashelkar's statement concerning the death of his father-in law. The Court extends its condolences, and if Mr. Kashelkar was subjected to any discourtesy (such as the failure to return a telephone call by the Deputy Clerk), the Court tenders its apologies.

Denial of my MacCartney Petition for Rehearing-dated Feb. 09, 2001

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of February two thousand one.

Present:

Ho. Amalya L/ Kearse
Hon. Pierre N. Leval
Hon. Sonia Sotomayor

CIRCUIT JUDGES,

UNITED STATES COURT OF APPEALS
FILED
Feb. 09, 2001
ROSEANN B. MACKECHNIE, Clerk
SECOND CIRCUIT

Kashelkar
Appellant,

Docket No.00-7090

v

MacCartney
Appellee.

A petition for panel rehearing having been filed herein by ASHOK KASHELKAR.

Upon consideration thereof, it is Ordered that said petition be and it hereby is **DENIED.**

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: Sd_____
Beth J. Meador
Administrative Attorney

pethrg_frm

My motion to Enlarge time, to file petition for "En Banc" hearing and the denial of March 09, 2001.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Number: 00-7090

Ashok Kashelkar
Plaintiff\Appellant
Harold Y. MacCartney, Jr. et al
Defendants\Appellees

UNITED STATES COURT OF APPEALS
Filed Feb. 21, 2001
ROSEANN B. MacKECHNIE, Clerk
SECOND CIRCUIT

Motion for: Enlarge time to serve\file Petition for En Banc Hearing

MOTION BY:

Ashok Kashelkar Pro Se
6 Innington Court, Spring Valley NY 10977

OPPOSING COUNSEL:

Please see attached list

Has consent of opposing counsel:

A. been sought? __Yes _x_ No
B . been obtained? __ Yes _x_No
Has service been effected? _x_Yes __ No

Judge or agency whose order is being appealed:
Judgement of Hon. McMahon-USDJ, the Summary Order of this Court, dated Nov. 07, 2000; affirming USDC Judgement and Summary Order of this Court, dated Feb.09, 2001

denying my petition for Panel Rehearing.

Brief statement of the relief requested: Request to "enlarge time" to March 09, 2001, for me to serve, file my petition for "En Banc" Hearing'

Sd _____
By: Ashok Kashelkar
Appearing for: (Name of Party) Pro Se
Appellant _x_ Plaintiff

Date: Feb. 17, 2001

ORDER

Before: Hon. Amalya L. Kearse, Hon. Pierre N. Leval, Hon. Sonia Sotomayor Circuit Judges

IT IS HEREBY ORDERED that the motion to extend time to file a *petition for rehearing* until March 09, 2001, be and it hereby is **DENIED.**

Date

UNITED STATES COURT OF APPEALS
Filed
March 09, 2001
ROSEANN B. MacKECHNIE, Clerk

For the Court:
ROSEANN B. MacKECHNIE, Clerk
By: Sd._____
Arthur M. Heller
Administrative Attorney

Clerk's office issued Mandate in MacCartney Matter

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventh day of November two thousand.

UNITED STATES COURT OF APPEALS
FILED
NOV.- 7 2000
Roseann B MacKechnie, Clerk

Present:

HONORABLE AMALYA L. KEARSE ,
HONORABLE PIERRE N. LEVAL,
HONORABLE SONIA SOTOMAYOR,
Circuit Judges.

ASHOK KASHELKAR ,

Plaintiff-Appellant,

No.00-7090

- v. -

HAROLD Y. MacCARTNEY, JR.; DEBORA J. DILLON; WILLIAM R. WATSON; BRUCE MULDOON; MACCARTNEY, MACCARTNEY, KERRIGAN & MACCARTNEY; O I CONNOR, MCGUINNESS, CONTE, DOYLE, OLESON & COLLINS; JOHN DOE, No. 1; JANE DOE, No. 1; JOHN DOE, No.2; JANE DOE, No.2,

Defendants-Appellees.

Appearing for Appellant: Ashok Kashelkar pro se,
Spring Valley, N.Y.

Appearing for Appellees
Harold Y. MacCartney, Jr.,
MacCartney, MacCartney,
MANDATE ISSUED 3/9/2001

Mandate is for itemized costs, payable to MacCartneys

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

UNITED STATES COURT OF APPEALS
Filed
Nov. 28, 2000

Roseanne B. MacKechnie, Clerk
SECOND CIRCUIT

ITEMIZED AND VERIFIED BILL OF COSTS

Docket No.00-7090

Kashelkar
v.
McCartney

Taxed in the amount of
$ 405.94
In favor of Appellee Harold Y. MacCartney, Jr, et al
For The Court
Roseanne B. MacKechnie, Clerk
Sd_____
Arthur M. Heller, Administrative Attorney
Date Nov. 28, 2000

Counsel for Defendants-Appellees, Harold Y. MacCartney, Jr., and MacCartney, MacCartney, Kerrigan & MacCartney respectfully submits, pursuant to Rule 39 c) of the Federal Rules of Appellate Procedure the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the Plaintiff-Appellant and in favor of the above Defendants-Appellees for insertion in the mandate.

Docketing Action_____
Costs of printing appendix (necessary copies -)_____
Costs of printing brief (necessary copies 18) $526.86 .
Costs of printing reply brief (necessary copies)_____
(VERIFICATION HERE)

STATE OF NEW YORK
COUNTY OF ROCKLAND

Sd._____
J. David MacCartney, JR.

J. DAVID MacCARTNEY, JR., am attorney admitted to practice before this Court, certifies as follows.

I am personally familiar with the costs for which this bill of costs is submitted. The costs were necessary to the prosecution of this appeal and actually were incurred.

Sworn to before me this
16th day of November, 2000. Sd._____
J. David MacCartney, JR.

Sd_____
NOTARY PUBLIC
SALLY MERGENTHALER
Notary Public, State of New York
No.4793245
Oualified in Rockland County
Commission Expires 1/31/2002
itembcost frm

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket Number: 00-7090

Ashok Kashelkar

Plaintiff\Appellant

Harold Y. MacCartney, Jr. et al

UNITED STATES
COURT OF APPEALS
Filed
Mar. 19, 2001
ROSEANN B.
MacKECHNIE, Clerk

Defendants\Appellees SECOND CIRCUIT

Motion for: Vacate, Stay, Modify it's Mandate and accept Petition for En Banc Hearing

MOTION BY: Ashok Kashelkar Pro Se
6 Innington Court, Spring Valley NY 10977

OPPOSING COUNSEL:
Please see attached list
Has consent of opposing counsel:
A. been sought? __Yes _x_ No
B . been obtained? __ Yes _x_No
Has service been effected? _x_Yes

Judge or agency whose order is being appealed: USDC SDNY Judgement under Appeal and this request specifically relates to the "Order of this Court", dated March.09, 2001 and the Mandate of March 09, 2001.

Brief statement of the relief requested: Vacate or modify the Mandate, stay enforcement of the Mandate and accept petition for En Banc Hearing and grant other relief as requested in the accompanying 8 page affidavit.

Sd _____
By: Ashok Kashelkar

Appellant _x_ Plaintiff
Appearing for: (Name of Party)
Pro Se

Date: March 16, 2001

ORDER

Before: Hon. Amalya L. Kearse, Hon. Pierre N. Leval, Hon.

Sonia Sotomayor Circuit Judges

IT IS HEREBY ORDERED that the motion be and it hereby is **DENIED.**

UNITED STATES COURT OF APPEALS
Filed
May 31, 2001
ROSEANN B. MacKECHNIE, Clerk

For the Court:
ROSEANN B. MacKECHNIE, Clerk
By: Sd._____
Beth J. Meador
Administrative Attorney

Case No. 2.... Kashelkar v Rubin & Rothman

Supreme Court Rule 14.1(i)(i)

Summary Order of Second Circuit-affirming District Court Decision in Rubin & Rothman matter

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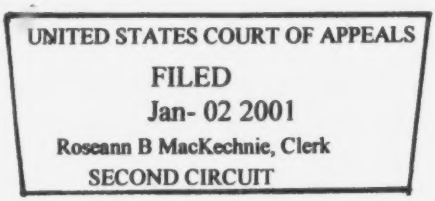
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED To THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF

COLLATERAL ESTOPPEL OR RES JUDICATA .

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 2nd day of Jan, two thousand and one



PRESENT: HON. DENNIS JACOBS,
HON. PIERRE N. LEVAL,
HON. ROBERT A. KATZMANN,
Circuit Judges.

----------X

ASHOK KASHELKAR,

Plaintiff-Appellant,

-v.- 00-7751

RUBEN & ROTHMAN, JOSEPH LATONA, ROBIN LONG, KEITH ROTHMAN, SCOTT RUMPH, HOUSEHOLD INTERNATIONAL, INC., HOUSEHOLD BANK-FSB, HOUSEHOLD RECOVERY SERVICES, JOHN DOE #1, JANE DOE #1, JOHN DOE #2, JANE DOE #2, Defendants-Appellees.

----------X

APPEARING FOR APPELLANT :
ASHOK KASHELKAR, pro se,
Spring Valley, N . Y .

APPEARING FOR APPELLEE:

JOSEPH GERSHMAN, New York, N.Y.,
Cahill, Gordon & Reindel (Thomas J.
Kavaler, on the brief) .

Appeal from the United States District Court for the Southern District of New York (McMahon, J.) .

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be, and it hereby is, **AFFIRMED.**

Ashok Kashelkar, pro se, .appeals a judgment of the United States District Court for the Southern District of New York (McMahon, J.) dismissing his complaint .

I.

In September 1999, Kashelkar filed a complaint against Household International, Inc., a Chicago-based holding company; two of its subsidiaries, Household Bank F. S . B. and Household Recovery Services; and Household's lawyers, the Law firm of Rubin & Rothman LLC, as well as four of its current or former lawyers (collectively "defendants") alleging fraud, extortion, and obstruction of justice, in .violation of 42 U.S.C. §§ 1981, 1983, 1985 and the Racketeering Influenced and Corrupt Organization Act 18 U.S.C. §§ 1992, et. Seq.

In May 2000, the district court dismissed Kashelkar's complaint on the grounds: that Kashelkar's civil rights and negligence claims were time-barred because they were not raised until October 1999, more than three years after the 1994 state court civil suit from which the claims arose; that Kashelkar's because they were filed beyond the four-year statute of limitations; that Kashelkar failed to state a claim of

discrimination under §§ 1981, 1983 and 1985; and that any other claims he may have asserted were legally deficient or inscrutable.

Finally, the district court denied Kashelkar's motion to amend his pleadings by adding more exhibits on the ground that the amendment would be futile.

Kashelkar's complaint alleged substantially the same claims as those he had raised in a previous. lawsuit against different defendants, Kashelkar v. MacCartnev, 79 F.Supp. 2d 370 (S. D. N.Y. 1999), which was dismissed by Judge McMahon for failure to state a claim. That dismissal was affirmed by this Court, Kashelkar v. MacCartney, No. 007090, 2000 WL 1678774 (2d Cir. 2000)

II.

On appeal, Kashelkar maintains that his complaint, with appendices, demonstrated that the defendants violated §§ 1981, 1983, 1985 and RICO, and that the district court decision was "factually wrong, " as well as "prejudicial, hostile, and discriminatory towards [him]," and should be reversed. Defendants maintain on appeal that, as the district court held, Kashelkar's claims were barred by the statutes of limitations and, in any event, were properly dismissed for Kashelkar's failure to state a claim upon which relief could be granted. The defendants point out that Kashelkar offered no facts to support his civil rights, RICO or negligence claims. Kashelkar filed a reply, which, to the extent it can be understood, restates his arguments on appeal and alleges that the district court's dismissal of his complaint was itself discriminatory.

This Court "reviews the dismissal of a complaint under Fed. R. Civ. P. 12(b) (6) de novo," Stuto v. Fleishman, 164 F.3d 820, 824 (2d Cir. 1999}; and the- denial of-a motion for

leave to amend for abuse of discretion, Jones v. New York State Div. of Military &-Naval Affairs, 166 F.3d 45, 49 (2d Cir. 1999) . Our review of the record confirms that the findings of the district court were correct with respect to all of Kashelkar's claims, as well as Kashelkar's motion to amend his complaint. We therefore affirm substantially for the reasons stated by the district court .

For the reasons set forth above, the judgment of the district court is hereby **AFFIRMED.**

FOR THE COURT:
Roseann B. MacKechnie, Clerk of Court

BY: Sd_____
Lucille Carr
[emphasis added by AK]

Since The Court of Appeals, "affirmed" the District Court Decision\Order and Judgement,"Substantially for the same reason", as the District Court, the District Court Decision\ Order is appended below.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

99 Civ. 10281 (CM)

ASHOK K KASHELKAR,
Plaintiff,

-against-

U. S. District Ct
Filed W.P.
May 02, 2000
S. D. Of N. Y.

RUBIN & ROTHMAN, et al.,

Defendants.

MEMORANDUM DECISION AND ORDER DISMISSING THE COMPLAINT AND DENYING THE CROSS-MOTION FOR LEAVE TO AMEND

McMahon, J. :

This is the second action to be filed with this Court (and assigned to this judge) arising out of Plaintiff Ashok Kashelkar's dissatisfaction with the resolution of his legal affairs. **In this first action, Kashelkar sued the judge,** the law secretary and the lawyers who were involved in a personal injury suit that arose out of a car accident involving his son. That lawsuit was dismissed by the Rockland County Supreme Court, which dismissal was affirmed by New York's appellate courts. Mr . Kashelkar alleged that his constitutional right to due process was violated by the handling of his case, specifically by the granting of an adjournment over his objection. This Court dismissed Plaintiffs frivolous complaint, which alleged inter alia, RICO violations and various constitutional torts. Kashelkar v. MacCartnev. No.99 Civ. 5132,1999 WL 1295986 (S. D. N.Y. Dec. 22,1999).

In this matter, Mr. Kashelkar has filed more or less the same complaint, this time against Household International, Inc., a Chicago-based holding company; two of its subsidiaries, Household Bank F .S.B. and Household Recovery Services; and Household's lawyers, the law firm of Rubin & Rothman LLC, as well as four of its current or former lawyers. Defendants' first sin was to sue Kashelkar to **recover money**

he had borrowed from Household Bank under a line of credit. (Household Action No. 1.) Their second sin was to make a pleading error in that case, naming a banking product, rather than the lending institution itself, as the Plaintiff, which led to the voiding of a judgment entered against Kashelkar in that action. Their third was to have the misfortune to purchase a credit card debt that Kashelkar owed to Chemical Bank and to bring a suit to recover those funds. (Household Action No.2.) They knew not with whom they were dealing.

-1

Mr. Kashelkar's complaints against Defendants are difficult to discern on the face of his 119 page (with 141 pages of exhibits) Complaint - even to a Court familiar with Plaintiffs mode of pleading. As best the Court can understand his theory, it is that Household has sued to collect the money owed by Kashelkar **because he is a member of a minority group** (of South Asian ancestry); that the naming of the wrong entity as the party Plaintiff in Household Action No. 1 constitutes RICO violations or frauds; and that the **Rubin & Rothman Defendants conspired with a state judge (again!)** in Household Action No. 1 to deny him the right to a trial in that case **(in which he ultimately prevailed without the need for a trial).** As these claims are no more substantial than the claims asserted in Plaintiffs prior action, for the reasons articulated by Defendants in their memorandum of law, the present claims, too, are dismissed with prejudice. As **there is no conceivable basis on which Plaintiff could state a viable claim** under the relevant Federal RICO, conspiracy and civil rights laws on the facts pleaded, Plaintiffs motion for leave to replead is also denied.

STATEMENT OF FACTS **(Fn1)**

The following statement of facts is distilled from the Complaint and its exhibits.

The 1994 Action

In April 1991, Plaintiff received a conditional check in the mail from Household Bank in the amount of $1,500. (Cplt. # 6 & Ex. P-01.) The check stated in writing that by executing and depositing it, "You accept our offer and agree to the terms and conditions of the HFC Cash Reserve Account Agreement Form 5537NY(4-91) which you received and read and which is incorporated herein by reference." (Cplt. Ex. P-06; Gershman Aff't Ex. 1.) A copy of the HFC Cash Reserve Account Agreement ("Cash Reserve Agreement") was enclosed with the check. (Cplt. Ex. P-06; Gershman Aff't Ex. 1.) The Cash Reserve Agreement provided, in pertinent part:

> If you accept our HFC Cash Reserve Account offer, this Agreement will govern the terms and conditions of the Account. We want you to understand how your account works. Read this carefully and complete and sign our Account Opener in order to indicate your acceptance of the Account. . . .
>
> AVAILABLE CREDIT . Your HFC Cash Reserve Account is a revolving line of credit through which you may obtain funds up to a credit limit we assign you.
>
> PROMISE TO PAY . You promise to pay Household: (a) amounts borrowed under this Agreement; (b) Finance Charges, Administrative Charges (the late

(Fn1) All citations to Cplt. # in the Statement of Facts herein refer to the statement of facts section of the Complaint.

> charge and bad check charge), and other charges provided in this Agreement; (c) insurance charges, if any; (d) collection costs permitted by applicable law, including reasonable attorneys' fees and court costs; and (e) amounts in excess of your credit limit that we may lend you, including Finance Charges.
>
> VARIABLE RATE. You agree that the monthly periodic rate used in determining your Finance Charge will be a variable rate which may change from month to month. The monthly periodic rate will be one-twelfth of the sum of the Prime Rate plus 9.9 percentage points. (Cplt. Ex. P-06; Gershrnan Aff't Ex. 1.)

On May 16, 1991, Plaintiff endorsed and deposited the check in his bank account (Cplt. Ex. P-06; Gershrnan Aff't Ex. 1), thereby accepting Household Bank's offer to open an HFC Cash Reserve Account. (Cplt.# 8.) Household Bank mailed Plaintiff a checkbook (Cplt. # 11), which he used to draw on his line of credit by depositing checks in his bank account. (Cplt. Ex. P-06.) Household Bank thereafter sent Plaintiff monthly statements showing how much money he had borrowed, the interest rate, and what his minimum payment was for that month. (Cplt. # 12.) For approximately two years, the arrangement appeared to work smoothly. Plaintiff drew on his line of credit from time to time by writing checks, received monthly statements, and made payments on the

balance he owed. (Cplt. #13.)

At some point in 1993, Plaintiff fell behind in his payments (Cplt. #17), and Household Bank sent Plaintiff several letters and made a number of telephone calls asking him to resume payments. (Cplt. # 15-17 & Ex. P-06.) In June of 1994, the law firm of Rubin & Rothman contacted Plaintiff on behalf of Household Bank by letter and telephone, asking that he contact the firm to discuss his outstanding debt. (Cplt. # 20.) Rubin & Rothman sent Plaintiff a second letter on September 7,1994. (Cplt. # 22.) Plaintiff did not respond, and Household Bank then served a complaint signed by Robin Long, commencing an action in New York State Supreme Court in Rockland County to recover the $3200 Plaintiff owed Household Bank. (Cplt. # 23-24 & Ex. P-05.)

In October 1994, Plaintiff filed an Answer and Counterclaim. and Household Bank replied in November 1994. (Cplt. # 26.) On April 15, 1995, Household Bank served a motion for summary judgment. (Cplt. # 28.) Plaintiff contends that service of this motion constituted a violation of his right to a trial. (Cplt.# 47.) Plaintiff filed responsive papers and cross-moved for summary judgment. (Cplt. # 37, 39, 53.) Household Bank opposed the cross-motion. (Cplt # 47.) On August 24, 1995, Justice Rudolph granted Household Bank's summary judgment motion and denied Plaintiff's cross-motion. (Cplt. # 56.)

Plaintiff appealed Justice Rudolph's decision in September 1995. (Cplt. # 59.) On October 10, 1995, Household Bank notified Plaintiff that it had obtained a judgment against him. (Cplt.# 64.) On October 17, 1995, Household Bank served an Information Subpoena and Restraining Notices, signed by Keith Rothman, upon Chemical Bank and Bank of New York, the banks where Plaintiff maintained his personal and

business banking accounts. (Cplt. # 65.) Service of

the restraining orders caused $2,600 in Plaintiff's three accounts to be frozen. (Cplt. # 67.) Because his accounts were frozen, certain checks bounced. (Cplt. # 68.) Plaintiff claims he was charged $15 for each bounced check, and that in total the banks charged him $450 in fees for bounced checks. (Id.)

Plaintiff claims that from April-June 1995, **he was virtually precluded from working because he was devoting so much time to litigating the $3,200 action** with Household Bank. (Cplt. # '70.) Plaintiff further alleges that his inability to work, caused by his need to spend all of his waking hours preparing his defense, adversely affected his finances and precluded him from paying his automobile insurance premiums, which allegedly resulted in the cancellation of his insurance and the imposition of $360 in civil penalties by the New York State Department of Motor Vehicles. (Cplt. # 70-71.)

Plaintiff claims that he was also adversely affected by the freezing of his bank accounts, which resulted in a brief interruption of the payment of his life, disability and health insurance premiums. (Cplt. # 69, 74.) Plaintiff acknowledges that payment of his premiums had returned to normal by February 1996. (Cplt.# '74.)

On March 6, 1996, Plaintiff filed an Order to **Show Cause or a Motion to Vacate the Judgment, on the grounds that the complaint had incorrectly named the Plaintiff in the state court action.** (Cplt. # 95-97.) Because of an error in communication between Household Bank and Rubin &

Rothman, the Plaintiff in the state court action was identified as HFC Cash Reserve Div. of Household Bank, F. S. B. (Cplt. # 98 & Ex. P-36.) HFC Cash Reserve is a product provided by Household Bank, not a legal entity . (Cplt. Ex. P-36.) Household Bank filed a number of complaints around this time with the same infirmity. (See Cplt. #114 & Exs. P-37 and P-48.) On March 15,1996, Household Bank acknowledged the error in papers submitted by Joseph Latona, and requested that the caption be amended to reflect the correct name of the entity to which Mr. Kashelkar owed money. (Cplt. # 98 & Ex. P-36.) On May 3, 1996, Justice Rudolph ruled that the pleading error was jurisdictional, ordered that the judgment and the restraining orders be vacated, and stated that Household Bank was free to re-file the lawsuit with the correct name in the caption. (Cplt. #118 & Ex. P-40.) Plaintiff has never repaid the $3,200 he owes Household Bank from his Cash Management Account. (Cplt. pp. 1-119.) On May 21, 1996, Plaintiff served his banks with copies of Judge Rudolph's decision so that his accounts would be un-frozen. (Cplt # 119 & Ex. P-41.)

The 1996 Action

In addition to reneging on his obligation to repay Household Bank, Plaintiff apparently stopped making payments on his Chemical Bank Master Card account in 1995. (Cplt Exs. P-49, P-5 1, P-52; Gershman Afl't Ex. 2.) Chemical Bank sold this account, among others, to Household Recovery. (Cplt Exs. P-49, P-5 1, P-52; Gershman Aff't Ex. 2.) In February 1996, Rubin & Rothman sent Plaintiff a letter informing him that they were representing Household Recovery in a claim against him for $7,880.18 arising out of this delinquent account (Cplt

132.) Household Recovery filed a complaint in New York State Supreme Court, signed by Scott Rumph, for recovery of the $7,880.18. (Cplt. Ex. # 49-52.) Plaintiff answered and counterclaimed, Household Recovery replied in a pleading signed by Joseph Latona (Cplt. Ex. P-50), Plaintiff demanded a bill of particulars, and Household Recovery filed a bill on October 31, 1996, also signed by Joseph Latona. (Cplt. Ex. P-52.) Plaintiff does not allege that any thing else has happened in the 1996 action. (Cplt. pp. 1-119.) Plaintiff does not allege any misstatements, misrepresentations or injuries in connection with the 1996 action.(Id.)

Plaintiff, who alleges he is a Hindu born in India, has now filed this action against Household Bank, Household Recovery, and their corporate parent, Household International, as well as the law firm of Rubin & Rothman, which represented the Household entities in the state court actions, and four Rubin & Rothman attorneys who worked on the two actions. (Cplt. pp.1-119.) Plaintiff alleges violations of the federal civil rights laws, and state negligence law, (RICO) arising out of these **two garden-variety collection actions** against him. (Cplt. pp. 1-119.)

DISCUSSION

I. Plaintiffs Civil Rights and Negligence Claims Are Time-Barred

Plaintiff's civil rights and negligence claims (Counts 1- 7) are barred because they were not brought within the three-year statute of limitations. Suffolk County Water Authority v. J.D. Posillico. Inc.. 700 N.Y.S.2d 45, 46-47 (2d Dep't 1999) (affirming dismissal of negligence claim on the grounds that it was barred under 3-year statute of limitations for negligence claims); Parker v. DeBuono. No.98 Civ. 5765,

1999 WL 771365, at * 1 (S. D. N.Y. Sept. 28, 1999) ("The statute of limitations on §§ 1983 and 1985 claims is three years."); Ortiz v. Morgenthau. 772 F. Supp. 1430, 1432 (S. D. N. Y. 1991) ("The three-year limitations period is appropriate for actions pursuant to 42 U.S.C. §§ 1981 and 1985. . . .), aff'd. 962 F.2d 4 (2d Cir. 1992.).

Plaintiff's alleged civil rights claims arise solely out of the 1994 civil suit, **(Fn2)** and thus are time-barred because they accrued more than three years prior to the commencement of this action. Plaintiff filed this suit on October 5, 1999. Therefore, any civil rights claims which accrued prior to October 5, 1996 are time-barred. All of Plaintiffs civil rights claims arose prior to October 5, 1996.

Fn2 See Cplt. Civil Rights pg. 1- "Basis of CIVIL RIGHTS action ... All of the following statements relate to 1994 civil suit, in Rockland County, Under Index No.6239-94."

-5-

In New York, federal civil rights actions are governed by a three-year statute of limitations. See Owens v. Okure. 488 U.S. 235, 250-51 (1989) (holding that New York statute of limitations for § 1983 actions was three years). "Federal civil rights claims accrue at the point in time when Plaintiff knows or has reason to know of the injury which is the basis of his action." Parker. 1999 WL 771365, at *1 (citation omitted). See also O'malley v. GTE Service Com..758 F.2d 818,820 (2d Cir. 1985). The proper focus is on the time of the discriminatory or injurious act, "not the point at which the consequences of the act become painful." Chardon v. Fernandez. 454 U.S. 6,8 (1981). Plaintiff should have been on notice of the allegedly discriminatory decision to sue him no

later than the date the suit was served on him -- September 28, 1994.**(Fn 3)** Similarly, with regard to the 1996 action, Plaintiff was presumably aware of any discriminatory or unlawful conduct towards him by Defendants as of the date he was served with the 1996 complaint, or on or about June 8, 1996, and therefore the three-year statute of limitations expired on or about June 8, 1999, approximately four months before this action was filed.(**Fn 4**)

While Plaintiff does not clearly articulate a negligence claim, any negligence arising out of the 1994 or 1996 actions would be similarly time-barred.

II. Plaintiff Fails to Plead Federal Civil Rights Claims

In addition to being time-barred, Plaintiff fails to state a claim under the federal civil rights statutes. Plaintiffs discrimination claims fail because they allege nothing more than that he is a member of a minority and he was sued. The Complaint is devoid of any facts that might indicate discriminatory intent, or that Plaintiff was treated differently than whites. If Plaintiff's allegations were sufficient to state a discrimination claim, any member of any minority would have a discrimination claim every time he was sued. The § 1983 allegations fail to state a claim because Plaintiff has not and cannot plead state action, nor has he identified a constitutionally protected right that was violated.

Fn 3 Even if a court were to determine that the claims did not accrue until the end of the lawsuit. when the judgment was vacated, the civil rights claims were time-barred as ofMay 3,1999. (Cplt. SOFA #118.)

Fn 4 Similarly, many of the asserted RICO claims are

time-barred pursuant to the four-year statute of limitations for civil RICO actions. See Agency Holding Corp. v. Malley-Duff & Assocs.. 483 U.S. 143,156-57 (1987.). Plaintiff fied suit on October 5, 1999. Therefore, any RICO claims which accrued prior to October 5, 1995 are time-barred.

-6-

A. Plaintiff Fails to State a Claim Under 42 U.S.C. 1981

To state a claim under § 1981, the complaint must allege that "(1) the Plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the Defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute. . . ." Mian v. Donaldson Lufkin & Jenrette Securities Co . 7 F.3d 1085, 1087 (2d Cir. 1993). "In order to survive a motion to dismiss, the events of the intentional and purposeful discrimination, as well as the racial animus constituting the motivating factor for the Defendant's actions must be specifically pleaded in the complaint." Dove v. Fordham University. 56 F. Supp. 2d 330, 338 (S. D. N. Y. 1999)(dismissing pro se complaint because **it lacked "allegations of racial animus** and intentional discrimination necessary to state a cognizable claim under § 1981 ").

This claim (Count 1) must be dismissed for the same reasons an identical claim was dismissed by this Court in MacCartnev. on the grounds that **"it fails to allege either facts supporting an inference of discriminatory intent or that Mr. Kashelkar was treated differently** than white individuals who opposed requests for adjournment or who refused to submit affidavits that would create genuine issues of material fact in opposition to pending motions. . . II MacCartnev, 1999 WL 1295986, at *3. **The only facts**

alleged are that Plaintiff is a non-white Hindu born in India. (Cplt. Civil Rights '22.) The rest of the claim is conclusory. For example, the Complaint states "**[t]he CD [Defendants] have and demonstrated their deeply imbedded animosity towards 'non-whites' by conspiring against AK [Plaintiff], to defraud him of his rights and property , in the Rockland Proceeding.** . . CD determined, that AK being a 'non-white' must be 'stopped in track' from causing harm to the interests of the CD." (Cplt. Civil Rights # 22(c)-(d).)

B. Plaintiff Fails to State a Claim Under 42 U.S.C. 1983

Plaintiff's §1983 claim (Count 2) must be dismissed because (1) it does not, and cannot, plead state action, and (2) it fails to identify a constitutionally protected right. To state a claim under § 1983, Plaintiff must allege conduct, under color of state law, that deprived him of rights secured by the constitution or laws of the United States. See Gangemi v. Johnson. No.98 Civ. 8470, 1999 WL 77786 1, at * 1 (S. D. N . Y . Sept. 30, 1999). Plaintiff cannot plead state action in this case because all of the Defendants are private parties as a matter of law. "It is well established that attorneys are not state officers, but private persons, for the purpose of the Civil Rights Act." Stambler v. Dillon. 302 F. Supp. 1250,1255 (S. D. N. Y. 1969). Therefore, Plaintiff cannot satisfy the state action requirement by alleging that Rubin & Rothman or the individual lawyer Defendants were state actors. An identical argument by this Plaintiff was rejected by this Court in MacCartney. in which the Court determined that "[a]s to the §1983 claim, the Court notes that the MacCartney Defendants are not state actors. They are private attorneys who were defending the interests of a client in an actjon brought by Plaintiff in a state court. Plaintiff alleges no facts

that would permit this Court to identify them wjth the authority of the state." MacCartnev. 1999 WL 1295986, at *3.

-7-

Nor does use of the New York State court system amount to state action. See Sundwall v. Weinstein & Assocs..No. 3:97 CV 405,1997 WL 507724, at *3 (D. Conn. Aug. 19, 1997) ("The only arguable state action referenced in Plaintiffs complaint is Defendants' use of the state and federal court systems. **However, the actions of attorneys in litigating cases *do not generally amount to conduct*** that can be attributed to the state.")(citing cases). Therefore, Plaintiffs attempt to allege state action via the lawyer Defendants' interactions with "state agent - Justice Rudolph (who was swayed by the R&R arguments over AK's)" is insufficient as a matter of law. (Cplt. Civil Rights # 51.)

Nor has Plaintiff identified a constitutionally protected right that has been violated. The essence of Plaintiff s civil rights claims appears to be **some kind of denial of access to the courts or First Amendment** claim arising out of the 1994 action in that (1) Rubin & Rothman did not consent to each additional adjournment he requested or every voluminous affidavit he sought to submit, and (2) that by *filing a meritorious summary judgment motion*, the Rubin & Rothman Defendants denied Plaintiff his constitutional right to a jury trial and infringed upon his First Amendment rights. **(Fn5)** (Cplt. Civil Rights # 1-51.) Plaintiff appears to be under the misunderstanding that one is entitled to a trial before a jury in every court case, without regard to whether there exist any triable issues of fact. **(Fn6)** But there is no unmitigated right to a trial in every case, as cases may be decided on a motion where there are no disputed issues of fact. **A litigant is not entitled to a jury trial simply**

because he wants a forum to espouse his views. Moreover, Plaintiff was afforded ample opportunity to submit briefs and affidavits to the court in the 1994 action, and he prevailed in that action -- albeit as a result of a pleading error, and not on the merits.

C. Plaintiff Fails to State a Claim Under 42 U.S.C. 1985

Plaintiff's §1985 claims (Counts 3-5) fail for the same reason these identical claims failed before this Court in MacCartney: "Plaintiff has **neither alleged any conspiratorial act** with the particularity required nor set forth any factual allegation to support his conclusion that Defendants conspired against him. . . because he was an Indian who practices the Hindu religion." MacCartney. 1999 WL 1295986, at *3.

Fn5 The § 1983 claim also alleges due process and equal protection violations, but these claims are summarily dismissed for Plaintiff's failure to allege state action.

Fn6 See Cplt. Civil Rights '15 ("AK had the right to present all material evidence of admissible nature; **to expose counsel's perjury and misconduct of counsels and the Plaintiffs witnesses** - in Rockland Court proceeding, by conducting proceedings in open Court, by confronting, cross-examining and impeaching adverse witnesses, during requested hearing or trial; that being one of the most fundamental rights ... under the U.S. Constitution.").

Count 6 of the complaint appears to be a rehash of the five prior civil rights claims and, for the reasons stated above, is dismissed along with the other civil rights claims.

III. The Complaint Fails to State a Claim Under RICO

To state a claim under RICO, 18 U.S.C. §§ 1961 et seq., a plaintiff must allege (1) that the Defendant (2) through the commission of two or more "predicate acts" (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce. Morin v. Trupin. 711 F. Supp. 97,105 (S. D. N.Y. 1989) (citation omitted). In addition, the plaintiff must allege that he was injured in his business or property by reason of a violation of § 1962. See 18 U.S.C. § 1964(c); Morin, 711 F. Supp. at 104. **Plaintiffs RICO claims (Counts 8-17) - purportedly brought pursuant to §§ 1962(a)-(d) - fail to satisfy these requirements, and therefore are dismissed.** The RICO claims' general failings will be discussed first, followed by some brief comments directed to the additional infirmities of each specific claim, §§ 1962(a)-(d).

A. **The Complaint Does Not Allege Commercial Injury**

Plaintiff **has not adequately alleged that he suffered injury to his "business or property" as required to state a RICO claim.** ~ MacCartnev. 1999 WL 1295986, at *3. The only injury **Plaintiff alleges is to his personal interests.** In fact, the only reference to his commercial interests in the entire complaint is that a business bank account was frozen for a few months - but Plaintiff does not allege any injury to his business as a result. (Cplt. SOFA # 65, 67.) Plaintiff alleges, inter alia, that he was forced to spend time and money to defend himself in the 1994 and 1996 lawsuits (Cplt. SOFA # 26, 34, 54, 73), that he experienced difficulties with his personal insurance coverage (Cplt. SOFA #69-71,74), and that his personal constitutional rights were in some way

infringed upon. (Cplt. SOFA # 47; Civil Rights # 1-51 .) **None of this constitutes commercial injury .**

B. The Complaint **Does Not Plead an Enterprise**

Plaintiffs RICO claims also fail because he has not pleaded an enterprise within the meaning of the RICO statute. To plead an enterprise, Plaintiff must allege facts showing "a group of persons associated together for a common purpose," which" is proved by evidence of an ongoing organization. . . and by evidence that the various associates function as a continuing unit." United States v. Turkette. 452 U.S. 576,583 (1981). Plaintiff has failed to allege an enterprise with sufficient particularity, and one that is separate and apart from the purported pattern of racketeering activity . See First Nationwide Bank v. Gelt Funding Com.. 820 F .Supp. 89,98 (S. D. N.Y. 1993), aff'd. 27 F.3d 763 (2d Cir. 1994), cert. denied. 513 U.S. 1079 (1995). **Plaintiff has not alleged and described a larger enterprise** of which each of the Defendants is a part; instead, he has alleged that Rubin & Rothman, Household International, Household Bank,

and Household Recovery are each an enterprise.**(Fn7)** Plaintiff s allegations run afoul of the well-established rule that RICO persons and the RICO enterprise must be distinct from one another. See Bennet v. United States Trust Company of New York, 770 F.2d 308, 315 (2d Cir. 1985); O & G Carriers. Inc. v. Smith, 799 F. Supp. 1528, 1543 (S. D. N.Y. 1992) (dismissing § 1962(d) claim on the grounds that it was vague and conclusory). **Here, Plaintiff has alleged that the RICO persons -- the Defendants -- are each a RICO enterprise.**

C. The Complaint Does Not Allege Predicate Acts

The RICO actions are also dismissed on the ground that the Complaint fails to allege adequately the commission of predicate acts necessary to constitute "racketeering activity." **Garden-variety pleading errors and the filing of routine motions** do not constitute RICO predicate acts. To hold otherwise would turn every state court lawsuit into a predicate for a subsequent federal RICO action.

(1) Obstruction Of Justice. Plaintiff's claim that Defendants obstructed justice by litigating against him in state court fails to state a claim as a matter of law, because the federal obstruction of justice statute only applies to proceedings in federal court. See O'Malley v.New York City Transit Authority. 896 F.2d 704,707 (2d Cir. 1990). Therefore, counts 12 through 16 are dismissed. **(Fn8)**

(2) Extortion. Plaintiffs "extortion" allegations similarly fail as a matter of law. Plaintiff claims Defendants violated both the Hobbs Act (18 U.S.C. §1951) and state extortion statutes. (Cplt. # 68- 71; RICO # 45(5)(A)-(B).) Extortion under both federal and New York law requires "the obtaining of property of another, with his consent, induced either by wrongful use of actual or threatened force, violence or fear, or under color of official right." Feeley v. Whitman Corp. 65 F. Supp. 2d 164, 174 (S. D. N. Y. 1999). However, a claim for extortion does not lie when the Defendant had a good faith claim of right to the money sought. See O'Malley.supra 896 F.2d at

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Fn7 See Cplt. SOFA # 57 - "R&R. HI, HB-FSB and HRS are 'enterprises' conforming to definition in Title 18 U.S.C. Section 1961(4) . . . ."

Fn8 See also Sundwall. supra, 1997 WL 507724, at *2 ("Plaintiff's other alleged predicate acts involve mail fraud and obstruction of justice claims, both arising out of the Defendants' alleged fraudulent activities in representing their clients in Connecticut state and federal courts. These allegations are insufficient, as a matter of law, to constitute the necessary predicate acts under RICO."); Guild v. Palmieri. No.87 CV 1418,1989 WL 119519, at .1 (E. D .N . Y . Sept. 29, 1989) ("If serving and filing an answer or a motion by any Defendant in a federal action could be considered obstruction of justice, this Court would be flooded with motions to amend complaints by Plaintiffs seeking to add RICO claims based upon mail fraud and obstruction of justice as soon as an answer was served. Such an interpretation of the RICO statute is untenable."), aff'd 904 F.2d 33 (2d Cir. 1990), Cert.denied. 498 U.S. 1049 (1991).

708-09; Goldberg v. Merrill Lynch. Pierce. Fenner & Smith. Inc., No.97 Civ. 8779, 1998 WL 50200, at * 5-6 (S. D. N.Y. Feb. 9, 1998). First, Plaintiff has no extortion claim because Household had a good faith claim to the money in both the 1994 and 1996 actions, as on each occasion the money sought belonged to Household; it had loaned funds to Plaintiff (or was the assignee of the lender) which Plaintiff refused to repay. To find otherwise would mean that every time a party brings a legitimate lawsuit or seeks to enforce a valid judgment, the party would be guilty of extortion. Second, no property was given with Plaintiff's consent, as required by the statute. Plaintiff vigorously opposed both lawsuits. See Goldberg. 1998 WL 50200, at *5.

(3) Mail and Wire Fraud. Plaintiff claims that Defendants

violated the mail fraud statutes by using the mail to (I) send court papers, unsolicited checks, and invoices for legal services, and (2) receive payment for legal services and repayment of "illegally distributed funds through unsolicited checks." (Cplt. RICO # 15-21.) Plaintiff claims Defendants violated the wire fraud statute by transmitting and receiving "falsified" legal papers, receiving credit card payments, and making and receiving calls from customers. (Cplt. RICO # 22-24.) Far from pleading conduct that would constitute a violation of the mail and wire fraud statutes, the Complaint does nothing to negate the proposition that these actions were completely lawful, and constituted nothing more than the legitimate conduct of attorneys representing their clients in pending litigation, and Household conducting lawful lending activities. This Court has soundly rejected the contention that such conduct by attorneys can constitute mail or wire fraud. See Morin. 111 F. Supp. at 105 (dismissing a similar claim and holding that "Congress could not have intended that the mail fraud statute sweep up *correspondence between attorneys,* dealing at arm's length on behalf of their parties, concerning an issue in pending litigation.... **Subjecting the letters in issue to the mail fraud statute would chill an attorney's efforts and duty to represent his or her client in the course of pending litigation.**"); D'Orange v. Feelv. 877 F. Supp. 152, 156 (S. D. N.Y. 1995) (dismissing RICO claims against attorneys who had allegedly sent fraudulent accountings through the mail and holding that the attorney's actions "cannot be considered predicate acts because they constitute legitimate conduct of attorneys acting on behalf of a client in the course of pending litigation"). These allegations fail to plead RICO predicate acts for the additional reason that they fail to satisfy the pleading requirements of a fraud claim. **(Fn9)** Federal Rule of Civil Procedure 9(b) states that in averments of fraud, "the circumstances constituting fraud. . . shall be stated with

particularity". Fed. R. Civ. P. 9(b). "Rule 9(b) . . . applies to civil RICO claims for which fraud is the predicate illegal act. In the RICO context, Rule 9(b) calls for the complaint to specify the statements it claims were false or misleading, give particulars as to

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Fn9 For example, Plaintiff attempts to plead wire fraud by stating " HB-FSB, HRS and other entities affiliated with III, millions of times over the similar long period, in return, have received payments from the "unwitting consumes" [sic] by way of the consumers using their credit cards, for payments; giving their consents for such payments, under duress; receiving from and making Interstate Telephone calls to ill, HB-FSB & HRS and other entities; violating 18 USCS 1343. . ." (Cplt. RICO # 23.)

the respect in which Plaintiffs contend the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." Gerstenfeld v. Nitsberg, 190 F. R. D. 127,130-31 (S. D. N.Y. 1999) (citations and quotations omitted).

In addition, the Plaintiff must (1) identify the purpose of the mailing within the Defendant's fraudulent scheme and (2) allege facts that give rise to a strong inference of fraudulent intent. See Id. Plaintiff does not satisfy any of these requirements. Plaintiff gives no particulars about the alleged statements, what they were, who made them, when and where they were made, what role they played in the scheme, or any facts which give rise to an inference of fraudulent tent. See MacCartney 1999 WL 1295986, at * 3 (dismissing mail

and wire fraud claims for insufficient particularity). Last, Plaintiff must allege reliance to establish injury "by reason of any predicate act of mail or wire fraud, which he does not. DiFiore v. DiLorenzo, 1997 WL 722697, at *6 (E. D. N. Y. Sept. 17, 1997). **"The predicate acts of an alleged RICO violation must then be the proximate cause of the Plaintiffs injury."** Id. Here, as in DiFiore."Plaintiffs have alleged no facts to show that any acts of **mail fraud were relied on by the Plaintiffs** in any way that was a substantial factor causing their injury" Id., and thus the RICO claims based on mail and wire fraud are also dismissed.

(4) The Travel Act. Plaintiff has not plead a violation of the Travel Act, 18 U.S.C. § 1952, because he has not plead that Defendants engaged in "unlawful activity" as that term is defined for purposes of the Travel Act. See 18 U .S.C. § 1952(b). The only act mentioned in the complaint which would constitute unlawful activity for purposes of The Travel Act is extortion, and for the reasons stated above, Plaintiff has not plead extortion. **(Fn10)**

D. Additional RICO Infirmities

The Complaint also fails to state a RICO claim for reasons unique to each subsection of § 1962. To state a violation of§ 1962(a), Plaintiff must allege that Defendants used income received from a pattern of racketeering activity to acquire an interest in or establish an enterprise engaged in or affecting interstate commerce. **The Complaint fails to allege that Defendants received income from racketeering activity,** acquired an interest in an enterprise, or established an enterprise. Therefore, for the reasons mentioned above, no violation of §1962(a) has been stated. See Morin. 835 F. Supp. 126, 131-32 holding that to state a §1962(a) claim Plaintiff must allege that the Defendants "received income

derived from a pattern of racketeering activity and invested it in the acquisition of any interest in, or the establishment or operation of, a RICO enterprise"). No violation of § 1962(b) is stated because Plaintiff fails to allege "that the Defendant acquired or maintained an interest in a RICO enterprise through a pattern of

---

Fn10 18 U.S.C. §§ 241, 242, 245, and 39 U.S.C. § 3009, are not predicate acts under the RICO statute. See 18 U.S.C. §1961(1). Nor are any of the alleged state statutory "criminal violations" RICO predicate acts either (Cplt. Criminal Violations # 24-25), **except possibly extortion**, which has been addressed above.

racketeering activity." Morin, 835 F. Supp. at 133; Dornberger v. Metropolitan Life Insurance Co.; 961 F. Supp. 506, 524-25 (S. D. N. Y. 1997) ("[T]o state a claim under §1962(b), a Plaintiff must allege an injury by reason of the Defendant's acquisition or maintenance of an interest in or control of an enterprise."). The Complaint fails to allege a violation of § 1962(c) because it does not allege in anything other than conclusory terms that any of the Defendants conducted or participated in the enterprise. See Reeves v. Ernst & Young, 507 U.S. 170, 177-79 (1993). Moreover, the Rubin & Rothman Defendants are alleged to have done nothing more than provide legal serv ices to Household Bank and Household Recovery, which has been held to be insufficient to meet the "operation and management" test under Reeves. See Morin, 835 F. Supp. at 133-36 (S. D. N.Y. 1993). Last, the complaint fails to allege a violation of§1962(d) because it does not adequately allege a violation of §§ 1962(a)-(c), nor does it allege a conspiracy to violate §§1962(a)-(c), except in conclusory terms, which is

insufficient to state a claim. See O & G Carriers. 799 F. Supp. at 1543 (dismissing § 1962(d) claim on the grounds that it was vague and conclusory).

In addition, the RICO claims are dismissed as to Rothman and Rumph **because these individuals are only alleged to have committed one act**, and therefore **cannot have committed the two predicate acts** necessary to state "racketeering activity", a required element in a RICO claim. See Lee v. Kim. No.97 Civ. 4406,1998 WL 20003, at *3 (S. D. N.Y. Ian. 20,1998). Rumph is alleged to have signed the 1996 Complaint (Cplt. SOFA # 154), while Rothman is alleged to have signed the information subpoena and restraining notices served on Kashelkar's banks. (Cplt. SOFA # 65.) Moreover, the complaint is utterly devoid of any allegations concerning Household International (a remote holding company), nor are there any allegations suggesting that it would be appropriate to pierce the corporate veil, and therefore the complaint must be dismissed as to it.
Last, **Plaintiff has no standing to complain about alleged misrepresentations made to others,** and therefore paragraphs 136-147 of the Statement of Facts, and the exhibits associated therewith, are stricken pursuant to Fed. R. Civ. P. 12(f).

IV. Plaintiffs "Statutory Negligence" Claim and Other Claims

This claim (Count 7) is completely indecipherable, and is dismissed for vagueness. It states, in part, "[t]he CD wilfully flouted letter and spirit of every law, rule, regulation and provisions of the U.S. and well as New York Constitution, at will." (Cplt # 51.) To the extent the complaint attempts to state a fraud claim (Cplt Conspiracy to Defraud), it fails for, among other reasons, its failure to plead either (1) detrimental

reliance or (2) facts which give rise to a strong inference of fraudulent intent See Lama Holding Co. v. Smith Barney Inc., 88 N. Y.2d 413,421, 646 N. Y .S.2d 76,80 (1996)(stating that elements of a fraud claim are "a misrepresentation or a material omission of fact which was false and known to be false by Defendant, made for the purpose of inducing the other party to rely on it, justifiable reliance of the other party on the misrepresentation or material omission, and injury."); Fed. R. Civ .P . 9(b). Plaintiff does not and cannot plead reliance because all of the alleged "misrepresentations appeared in legal papers in the course of adversary litigation; they were not statements made by Household upon which Plaintiff relied or changed his position in reliance thereon. (Cplt. SOFA # 123-134.) See

Nineteen New York Properties limited Partnership v. 535 5th Operating Inc. 211 A.D.2d 411, 412-13,621 N.Y.S.2d 42,43 (lst Dept. 1995) ("The only fraud alleged is with respect to statements made in the complaint and in support of Plaintiffs motion; there could be no detrimental reliance on such statements."). The particularity issue has already been addressed in the mail and wire fraud section above, and the same failings apply here, particularly the absence of facts giving rise to an inference of fraudulent intent and an explanation as to why many of these statements are false.

The Complaint does not plead a violation of39 U.S.C. §3009 by Household because that statute concerns the mailing of unsolicited merchandise to customers, not unsolicited offers of credit. Household did not send Plaintiff any merchandise -- it sent him an offer to open a line of credit, which he was free to accept or reject. To accept, Plaintiff had to endorse and deposit the check which had been sent to him. The federal

courts have held that this statute, by its terms, does not apply to such offers. In a similar case involving life insurance, Kipperman v. Academy life Insurance Co. 554 F.2d 377, 380-381 (9th Cir. 1977), the Ninth Circuit rejected the contention that an unsolicited insurance policy, which Plaintiff was free to accept or reject, was merchandise within the meaning of 39 U.S.C. § 3009.

V. Motion for Leave to Amend

Plaintiffs cross-motion for leave to amend the complaint is denied. Because the claims are all time-barred, it would be futile to permit amendment. Moreover, this Court is convinced that Plaintiff cannot state any claim against these Defendants, under either Federal or State law, based on the facts alleged in the Complaint.

CONCLUSION

The Court directs the Clerk to enter judgment dismissing the Complaint with prejudice, with costs on the motion. **There being no contractual basis for an award of attorneys' fees** in this case (which is not a collection case), Defendants' motion for attorneys' fees is denied.

Dated: April 29, 2000

Sd Colleen McMahon
U. S. D J.

Following conforms to Supreme Court Rule 14.1(i)(iii)

CA2NY Order denying Panel Rehearing

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of February two thousand one.

Present:

Hon. Dennis Jacobs
Hon. Pierre N. Leval
Hon. Robert A. Katzmann

CIRCUIT JUDGES,

UNITED STATES COURT OF APPEALS
FILED
Feb. 09, 2001
ROSEANN B. MACKECHNIE, Clerk
SECOND CIRCUIT

Kashelkar
Appellant,

v.

Docket No.00-7751

Rubin & Rothman
Appellee.

A petition for panel rehearing having been filed herein by ASHOK KASHELKAR. Upon consideration thereof, it is Ordered that said petition be and it hereby is **DENIED.**

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk
By: Sd_____
Beth J. Meador
Administrative Attorney

pethrg_frm

Following conforms to Supreme Court Rule 14.1(i)(iii)

Motion Granted, to Circulate "En Banc" Petition

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room I 7O2
New York. NY lOOO7

MOTION INFORMATION FORM

CLARIFICATION

Docket No. 00- 7751

UNITED STATES COURT OF APPEALS
FILED
Apr 6 2001
ROSEANN B. MacKECHNIE, Clerk
SECOND CIRCUIT

KASHELKAR v. RUBIN & ROTHMAN

Ashok Kashelkar
6 Innington Court
Spring Valley, NY 10977

	Yes	No
Consent sought from adversary(ies)?	___	___
Consent obtained from adversary(ies)?	___	___
Is oral argument desired?	___	___

-ORDER-

BEFORE: Hon. Dennis Jacobs,
Hon. Pierre N. Leval,
Hon. Robert A. Katzmann,
Circuit Judges

IT IS HEREBY ORDERED that the motion for leave to file the petition for rehearing en banc dated March 9, 2001, be **GRANTED. IT IS FURTHER ORDERED** that the requests for further explanation and for certification to the U. S. Supreme Court are: **DENIED**. The motion to grant the petition for rehearing en banc shall be determined by the full Court based on the petition: therefore the motion to grant rehearing en banc is **DENIED**.

ROSEANN B. MacKECHNIE, Clerk
By: Sd_____
Beth J. Meador, Administrative Attorney

Date: APR -6 2001

Following conforms to Supreme Court Rule 14.1(i)(iii)

Court Of Appeals Decision-not to consider my Petition for En Banc Hearing

---

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the sixteenth day of May two thousand one.

Docket No. 00-7751

Kashelkar
Appellant
v

Rubin & Rothman
Appellee

UNITED STATES COURT OF APPEALS
FILED
May 16, 2001
ROSEANN B. MACKECHNIE, Clerk
SECOND CIRCUIT

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by
the appellant ASHOK KASHELKAR

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the Court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: Sd_____
Beth J. Meador
Administrative Attorney

Enbancdn_frm

Prepared and submitted by

Petitioner- Ashok Kashelkar Pro Se
6 Innington Court
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Supreme Court, U.S.
FILED
01 274 AUG 13 2001
OFFICE OF THE CLERK

(4)

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix C - Conforming to Rule 14.1(i)(vi)

Petitioner - Ashok Kashelkar - Pro Se
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Tel. (845) 426 2902

89 pp

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List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

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Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

Cahill, Gordon & Reindel
Joseph Gershman
80 Pine Street, New York NY 10005
Tel (212) 701 3000

Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "unusual nature of record" in the District Court [Southern District of New York, White Plains and The Court Of Appeals, for the Second Circuit throws "substantial light" upon the "peculiar method adopted by the Federal Judges [Courts] and by the staff members, particularly in the Court Of Appeals for the Second Circuit.

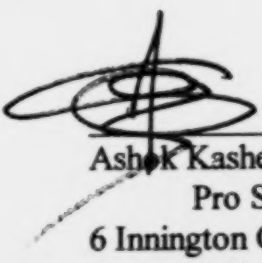
This Appendix C offers material conforming to Rule 14.1(i)(vi)

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 22, 2001



Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. (845) 426 2902

I filed the following affidavit, in the Court Of Appeals and forms part of the Appendix-in the appellate process. This affidavit was filed, to reflect upon the "Transcript of Oral Arguments" in the U. S. District Court, in MacCartney matter, on Nov. 05, 1999.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

ASHOK KASHELKAR — Docket No. 00-7090

Plaintiff - Appellant

-against- — Affidavit Of Plaintiff Appellant: Issues of USDC Transcript

HAROLD Y. MacCARTNEY, ET AL

Defendants \ Appellees

----------X

ASHOK KASHELKAR, Plaintiff \ Appellant, appearing Pro-Se, before this Court; in the subject matter, deposes and states as follows.

1) I offer this affidavit relating to absolutely *Extra-Ordinary Circumstances, reflecting upon "prejudice and\or hostility" in U. S. D. C. Judicial Proceeding* and in support of this appeal.

2) I am aware, that, in the "appellate process", evidence is not offered. This affidavit does not offer any "evidence " relating to the *events leading to my filing the action* in the U. S. D. C. SDNY, on July 05, 1999.

3) This affidavit, offers, information and facts relating to the developments, " predominantly relating to " the Initial Conference" in District Court, before Hon. Colleen McMahon, on November 05, 1999 and subsequently, documented through correspondence in this case and in the Transcript of another "Initial Court Conference of Feb. 29, 2000", [identified in paras 58 and 59 of this affidavit]; that is on the USDC Court Record.

4) When, I filed this "action" in the Southern District of New York, Clerk's Office; this matter was "originally" assigned to Hon. Koeltl by the "lottery ", that was drawn in my presence. Then, the matter appears to have been assigned or transferred to U. S. Magistrate Buchwald and then it appears to have been transferred to Hon. Colleen McMahon, at White Plains, NY.

5) By an "order of the Court", entered Sept. 13, 1999; Hon. Colleen McMahon, notified your deponent, that, the Court scheduled a conference; on November 05, 1999, at 9.30 AM. Copy of the District Court letter [excluding the Individual Judge's rules] is attached herewith as Exhibit AP-01.

6) After the Summons and complaint was served on the defendants, I did not receive any communication from any of the defendants, prior to receiving their "motion papers".

7) I did not have any concept, as to what I might face in the District Court and what kind of questions, I might face

from the District Judge.

8) I appeared in the Court, before Hon. Colleen McMahon, on the "scheduled date and at the designated time". After greetings were exchanged, I responded to the Court's question and informed the Court, about the basis of my Federal action. Most of it is on Page 4, beginning on line 14, that continues on to page 5. The Certified Transcript of the Preliminary Conference is attached as Exhibit AP-02.

9) Then the District Judge , began to express " her philosophy" about the "interpretations and application of " N. Y. State Laws", etc; that can be observed from Page 5 onwards.

10) The District Judge inquired of each of the defendant Counsel, as to whether they "moved to dismiss" [Page 6 Line 9 to line 23] and the answers have been in the "affirmative".

11) On page 7, the District Judge made clear statement, lines 6 to 10, to the effect, that, the *alleged* misconduct of the defendant's "abuse of the State Procedures" was not of any consequence as far as my claims for "lack of due process" were concerned.

12) The District Judge asked me a question as to why I was in Federal Court and I responded.

13) It is my contention, that, the **"exact question and my exact answer"** are not appearing in the transcript, on page 8. *There is change in the* "words exchanged, at that time". Therefore the connotation, in the present form "differs significantly", from my expressions in response to the District Judge's question.

14) On page 8, line 4 to 7; District Judge appears to have reached a "foregone conclusion" that, I could not "overcome" the question of Judicial Immunity of Bruce Muldoon.

15) On page 8, beginning line 22 the District Judge commented with a conclusionary remark that, she would *"dismiss my case"*, for the reasons she has expressed. To me, *it was the first indication*, that, District Judge '*had already made up her mind"*, to dismiss my case.

16) At the end of page 8 and beginning of page 9, the District Judge has expressed her opinion about "state litigants, losing in State Court and going to Federal Courts". Her remarks have "swept" an entire segment of population of litigants.

17) On page 9, I engaged in a dialogue about "false denial and true denial", as reflected between line 8 and line 21. I was surprised, at the District Judge's responsive remarks, therein.

18) I have remarked, on page 9, lines 22 to 24; that my contentions are not based upon "*my thinking* but are based upon NYS Court rulings."

19) On page 10, I introduced the "14th amendment of U. S. Constitution" aspect, applicable to the New York State Courts, Court employees and practicing attorney, as seen in line 4 to 6. District Judge's response is in lines 7 to 11 and refers to "state action papers".

20) On page 10, I raised the issue of "perfunctory actions".. ..on line 23 and the District Judge responded with remarks on line 24-25.

21) On page 11, I expressed that the Appellate Division of the New York Supreme Court or the Court Of Appeals, were not named as defendant, in the action. I specifically remarked that the "case is against individuals" [Line 7 to 12], who were responsible, for the misconduct leading to the "result in State action."

22) Then the District Judge asked me, if I "have any proof, supporting my claims" [I am only paraphrasing, here]. *The particular question of the District Judge, to me, does not appear in the transcript.* That question has been altogether eliminated, from the transcript.

23) The *"peculiar inquiry for proof"* was very "unusual", at the "initial conference". I was surprised at the question. Nevertheless, *the question* District Judge "posed me" *does not appear* in the "transcript" in the *present* form.

24) The "transcript" *has been changed* and it "re-creates and rearranges record", as reflected in the lines 13 to 19, forming that to be a part of my statement. *That is inaccurate.* The "re-arranged" RECORD [as innocuous as it may sound], in the lines "13 to 19" in reality, is NOT MY STATEMENT.

25) My response to District Judge's question was a short, " I do not have a smoking gun". The transcript reflects a long statement [Page 11, line 13 to 19], that I did not make.

26) What is missing is *either one or two questions* and statements of the District Judge, between line 7 to 19. Were "those questions", to appear in the transcript [as they originally were expressed]; they would have conclusively demonstrated and reflected upon "bias and prejudice on the part of the District Judge, towards me and \ or my case."

27) The reason, I responded with a short sentence was the way the "Court's question" was formulated. Such questions, certainly need not be asked, at the time of an initial conference. We were not conducting a Trial. That was not a "conference, conducted subsequent to completion of discovery and the one to be held before a Trial". I was not "moving, with a request for Summary Judgement" and this was just a preliminary conference, with the District Judge.

28) The district Judge got upset [the transcript does not fully reflect that] and her remarks are substantively reported from line 1 to 9 on page 12, reflecting "monetary sanctions".

29) On page 13, line 16 the district Judge said.. "I only read their papers"... referring to the defendant's submission and was looking at Mr. Sanders. [The transcript, does not reflect, where the District Judge was looking, at that time.]

30) I, therefore strongly believe, that the District Judge *"did not even read anything I ever served, filed and submitted."*, including my detailed complaint and my opposition to all the defendant's motions.

31) On page 13, from line 15 to 21, the District Judge expressed "limitation" of her authority and I responded from Line 22 \ page 13 to 2 \ page 14; that I was "not asking to reverse the State judgement."

32) On page 15, the district Judge appears to have referred to "16 boxes, full of material" in the back [office], submitted by other litigants, not connected, with this actions. The quality and "substance" of those papers, appear to have became the "measuring glass" and or "criteria" for deciding my case. I did not "re-invent" anything. I stated my case.

33) On page 15 line 8, Mr. Sanders asks about.."not replying in opposition "..and the District Judge appears to have accepted that concept..on line 10 to 12.

34) To this appellant, those expressions of Mr. Sanders [para 33 above] appear to be a "foregone conclusion, well understood" by Mr. Sanders [who seems to have appeared before Hon. McMahon]; that the case against his client, Mr. Bruce Muldoon will be dismissed.

35) At that very time, I got a "sixth sense" feeling that, I was "whistling in the wind."

36) Sensing, the "direction of the winds- blowing in my face", I asked about copy of the transcript [Page 12, line 21-22] and the very reason to ask for the "transcript" was to "obtain the exact transcription of the proceeding".

37) I decided to acquire the transcript, to "quote" the sequence and exact words of the District Judge, to show, that the District Judge was prejudiced, during the USDC proceedings. I did not expect, that, the "transcript" would be changed. I was not informed, about the changes, which, later took place, in the transcript.

38) I also "noticed" that, the District Judge used a "tone of voice", during the entire proceeding, that was unusually harsh, that conveyed and demonstrated "distinct displeasure towards me", for all the reasons, the District Judge may know. It even created an impression, on my mind that, the District Judge, wanted to "throw me out of her Court Room, almost at that moment".

39) I did not understand, at that time, as to what "wrong" I had committed, towards the District Judge; nor I have

understood, why the Judge's responses, in the "preliminary conference" were "so prejudicial to me" and I certainly fail to understand, the prejudicial steps of changing the transcript, to what is *"UNTRUE"*.

40) I can demonstrate to this Court, in how many different ways, one can say a few words, ***with different intonations*** (without changing even a syllable in the same statement or expression), to convey diametrically opposite "sense and emotions". I considered the "intonation" of the District Judge went to the "crux" of her "emotional" state of mind- *"leaning towards the defendants"*.

41) I immediately contacted the Court reporter's office and found out that, I have to pay over $4.40 per page for a report within 7 days. The Court reporter, in subsequent conversation indicated, that the "transcript" may be about 25 pages in length and hence, I sent $ 110.00, check; with a written request to the Court reporters office at Foley Square, in NYC, on Nov. 05, 1999; that the Office Of Court Reporters received on November 08, 1999.

42) Almost two weeks passed after the "Court appearance" and I did not receive the transcript, from the Court reporters. In fact I should have received the transcript, within two weeks; of my Court appearance; since ***I had paid necessary higher fee*** for such service. Hence, I called their office and spoke to several individuals. After the Office of Court Reporters inquired with the reporter in White Plains, I learnt that the Transcript will not be available for several days, since it was not transcribed. I reminded the "office manager" that I had paid EXTRA, for "speedy delivery".

43) I continued to press the Court Reporter's office and after it inquired at White Plains; I was informed that, the

"Transcript" will be sent to the Judge's Chambers and *upon it's approval*, I will get a copy. That sounded very strange.

44) I asked the Court Reporter's office to "put the "very" statement in writing" and send it to me. The Court Reporter's Office sent their letter, dated November 24, 1999. That is attached as **Exhibit AP-03**.

45) The letter does not refer to the word " Judge's approval" but states, "upon it's return by the chambers"

46) Of course, a Judge may ask for a Transcript, like any other record. But, that is a different matter, than, the reporter automatically [or on account of instruction to do so] *sending a "transcript" to a Judge, for review*; before it is released, to a litigant.

47) Eventually, the Court Reporter's office deposited the certified "transcript" copy in the mail on Dec. 03, 1999 [Postal Franking meter stamp]; that I received on the 7th of December 1999, my response in opposition defendant's motion, was due on December 06, 1999.

48) Subsequently, I inquired, at the Office Of This Court's Clerk, as to "how I may bring this matter, to the attention of the Court Of Appeals" and found that, I could "file a complaint" with the Office of The Clerk. I also found a "caveat" that, should a complaint relate to "a Court decision" it would "more likely" be "dismissed".

49) The objective of "raising this issue" is not to seek any PUNITIVE ACTION of any nature [as the printed information from this Court suggests], but to seek "JUSTICE" in the purest sense and assist in JUST ADMINISTRATION. For that reason, I have not filed a

FORMAL "complaint" about District Judge, Hon. Colleen McMahon but must bring the matter to the attention of this Court, for the sole reason; that, the entire episode raises serious questions about "impartial judicial process" in the District Court, where my case has been decided.

50) Making changes, in the transcript, without my knowledge, consent and \ or acquiescence is highly prejudicial to my rights and interest, as well as to the principles of "substantial justice".

51) Thereafter, I served and submitted my "opposition" to the defendant's motion on December 06, 1999; under considerable difficulty. I could see that, my "law memo" was completely "out of character" and I could not "formulate my arguments" in the desirable, format.

52) I received a letter from the District Court, dated December 10, 1999, attached here as **Exhibit AP-04**. It appears to show considerable confusion, in 2nd para. The Hon. District Judge wrote, that, I submitted "box full of Affidavits, Exhibits and records from the State Court Proceedings". Since, my submission included a December 04, 1999 affidavit, with some Exhibits and memorandum of laws, I failed to understand the "basis" of the Hon. District Judge's *comments and conclusions* [in Dec. 10, 1999 letter] ; to the effect that, I had served and filed the "state action papers, on Dec. 06, 1999, in the Court".

53) For the reasons cited in the Dec. 10, 1999 letter, the District Court extended time for me to prepare, serve and file my "opposition" to Motion for Summary Judgement to Dec. 17, 1999.

54) Even though, there is a"vague" reference to this

Court's ruling [relating to the Summary Judgements], the District Judge's letter did not cite any case and I still do not know, *to which particular ruling*, the letter refers to.

55) I am grateful for the extension of time [para 53 above], the Court provided, me.

56) The Decision of the Court is dated December 22, 1999 and it reflects the "pleas of all the defendants." It does not refer to "ANY " aspect of this appellant's complaint and or this appellant's submissions, in opposition to the defendant's motions.

57) The matters took another "curious" turn, on Feb. 29, 2000.

58) On Feb. 29, 2000, I was appearing before Hon. Colleen McMahon, in the same Court Room, in another of my matter, entitled Ashok Kashelkar v Rubin & Rothman, et al, under Case No.99 CIV. 10281(CM) and during "that" preliminary conference, Hon. Judge Colleen McMahon made the following comment:

> Mr. Kashelkar, last time (meaning during the "MacCartney" matter) you submitted a *THREE FEET STACK OF PAPERS*, to me. Please do not submit such papers, this time.
>
> I said," May I say something, your Honor ?" and upon receipt of permission from the Court, I said,
>
> "It was the MacCartney Law Firm, that, submitted the *stack of papers*. My submission was much less than that".

Then Hon. Colleen McMahon said that her honor, "may be exaggerating." That was the end of discussion of MacCartney matter.

59) It is also correct, that, according to the individual rules of District Judge McMahon, the District Judge wants "Original plus Two copies", to be filed in Court. Hence, there are "triple the quantity of papers" winding up, in her office. It is also correct, that one set of MacCartney submission including Motions, Exhibits, Answer and law memo, is almost a FOOT high, stacked up, flat on a table top.

60) This exchange of February 29, 2000, confirmed my belief, that, the District Judge completely "misunderstood", as to which "papers" I submitted and "which papers" were submitted by the defendants.

61) During the Feb. 29, 2000 "conference" the ***District Judge did not pose any questions to me***, as to why I was, "in the Federal District Court, with my complaint" as I faced the situation, described above, at the beginning of this affidavit. This conference was very short and lasted less than 5 minutes.

62) The "unusual set of circumstances, I have described above" would constitute, the " unusual methods of law enforcement, in the District Court of District Judge Hon. Colleen McMahon, I have faced, in this matter".

63) I respect the "Judiciary" as an institution, trusts it's authority but do not accept the "subjugation", at the hands of any individual.

WHEREFORE, this is to respectfully request, this Court, to take the "totality" of ALL the circumstances in consideration,

during the *de novo* review of this matter under appeal and dispense substantial Justice, to this appellant.

Dated: May 09, 2000
at Spring Valley, NY

Sd----------
Ashok Kashelkar

Sworn to before_____
On May 09, 2000

Notary..... Sd. Jill Rothbaum
Notary Public State Of New York
No. 44-4757575
Qualified in Rockland County
Commission Expires on March 30, 2002

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November 24, 1999

Mr. Ashok Kashelkar 6 Innington Court
Spring Valley, New York 10977

Re: Kashelkar v MacCartney 99 C iv. 5132 (CM)

Dear Mr. Kashelkar:

At your request, this letter is to confirm the information I gave you yesterday, November 23rd, regarding the status of

your transcript request in the above-entitled case.

We take note of the fact that your request was accompanied by your check on November 8th, for preparation of the transcript within five business days. Unfortunately, due to the pressures of covering the White Plains court, the reporter was not able to meet that commitment, for which we apologize. She has assured me that the transcript will be ready by Monday, November 29th for submission to Judge Colleen McMahon for review.

As soon as it is returned by chambers, we can then release it to you. Of course, the rate charged will be reduced from intermediate to a regular delivery rate of $3.30 per page.

We appreciate your patience and understanding in this matter.

Very truly yours,

Sd Nelida Capizzi

Nelida Capizzi
Office Manager

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2----------x
3 ASHOK KASHELKAR ,
4 Plaintiff,
5 v. 99 Civ. 5132 (CM)
6 HAROLD Y. MacCARTNEY, et al.,
7 Defendants.

8----------x

9 White Plains, N.Y.
November 5, 1999
10 9:35 a.m.

11 Before:
12 HON. COLLEEN McMAHON,
13 District Judge
14
APPEARANCES
15
ASHOK KASHELKAR
16 Plaintiff Pro Se
17
MacCARTNEY, MacCARTNEY, KERRIGAN &
MacCARTNEY
18 Attorneys for Defendants
J. DAVID MacCARTNEY, JR.
19
20 OFFICE OF NEW YORK STATE ATTORNEY
GENERAL
Attorneys for Defendants
21 CHARLES F. SANDERS
22 Assistant Attorney General
23 GARCIA & STALLONE
Attorneys for Defendant
24 KARL ZAMURS
25

1 MR. SANDERS: Good morning.
2 Charles F. Sanders, S-A-N-D-E-R-S, Assistant
Attorney General.
3
4 THE COURT: Good morning, Mr. Sanders. It's nice
5 to see you.
6 Who do I have from MacCartney?

MR. MacCARTNEY: Good morning. My name is David MacCartney for Harold MacCartney and the firm.

MR . ZAMURS : We represent McManus and McGinnis and William Watson.

THE COURT: Okay. Have a seat, gentlemen. Mr. Kashelkar, please tell me what your case is about.

MR . KASHELKAR : This case arises out of my filing an action in Rockland County in 1995 against a motorist, Levine, her husband and her insurance company, that is, Government Employees Insurance Company, GEICO. This arose out of the accident that happened on March 30, 1992. And I sued the Levines and GEICO. I sued the Levines for the damage that was caused to my car. My son was driving the car at the time.

THE COURT: Sir, I don't need to know the details. Tell me what happened to the state court case.

MR . KASHELKAR : The state court case, basically, after filing the summons and complaint is the first time I

found out that GEICO was fined by the Insurance Department for committing insurance law violations. My claim against GEICO was he had failed to settle my claim, and I amended

the
complaint to say that they were fined by the Insurance Department. This is a public record. As a result of that,
the answer that was filed by MacCartney in behalf of the
Levines was a basic boilerplate kind of denial answer. And in
denying the existence of a Rockland County road --
THE COURT: They filed, I'm sure, what's known as a general denial.
MR . KASHELKAR : General denial.
THE COURT: Is that correct?
MR . KASHELKAR : Yes.
THE COURT: Mr. MacCartney, you filed a general denial?
MR. MacCARTNEY: Well, there were a number of specific denials, as well, your Honor.
THE COURT: That's commonly done. It means that they
put you to your proof. That doesn't mean there is no such
road in Rockland County, but it means they're putting you
to your proof.
MR . KASHELKAR : GEICO also filed an answer denying
that GEICO ever paid any fines or were examined.
THE COURT: I would like to know why you're suing the
MacCartney firm and why you're suing representatives of the

4

state who are being represented by the Attorney General's

Office. I want to know why you're --
MR . KASHELKAR : Because of what happened subsequently. Because the suit against the Levines --
THE COURT: You lost.
MR. KASHELKAR : No, not because I lost. It is not because I lost, but the manner in which the loss occurred.
THE COURT: I see.
MR . KASHELKAR : This is not about the particular accident or what happened with GEICO. This is the process
which took place.
THE COURT: Tell me what it is about the process that
you feel has aggrieved you.
MR . KASHELKAR : What aggrieves me is, basically, when
a motion was filed by GEICO attorneys for amending my bill of
particulars, I filed a cross-motion for summary judgment and
submitted proof of GEICO's wrongdoing. And as a result of
that, when I submitted the proof and I requested that I would
like to call the Insurance Department employees to testify
that my submission was correct, and I requested a hearing
under 3212 and 2218 the CPLR of New York State -- I filed
that, it was served -- then a cross-motion for summary judgment was filed by the MacCartney firm in behalf of Levine.
The motion submitted by GEICO was returnable

July 21st, 1995. I served my papers on July 14, 1995. They

were received by counsel for both the parties at least by July 18, 1995. MacCartney prepared a cross-motion for summary judgment with an affidavit of Mr. Levine. It was prepared on July 19, 1995. It was actually served by mail on July 20, 1995. That was in violation of CPLR 2215, which requires that a cross-motion --

THE COURT : I know what CPLR 2215 requires.

MR. KASHELKAR: As a result, what happened, attorneys for MacCartney wrote to the Court that all the motions should be adjourned to August 18.For that purpose, I never consented to that.

THE COURT: It doesn't matter. The Court doesn't need your consent to adjourn.

MR . KASHELKAR : Well, the requisites of the --

THE COURT: Mr. Kashelkar, let me explain something to you.

This Court does not sit to enforce any state court litigant's understanding or interpretation of the rules. Now, I understand that you have appealed the dismissal of your case all the way up to the New York Court of Appeals. Is that

correct?
MR . KASHELKAR : That is correct.
THE COURT: And you have lost every step of the way;
is that correct?
MR . KASHELKAR : Yes, but it's a matter of the

process.
THE COURT: No, you had all the process that you're
entitled to, Mr. Kashelkar.
MR. KASHELKAR: That's exactly what I'm questioning.
THE COURT: Well, I understand you're questioning it,
but I don't have the ability, Congress has not given me the
ability, to say that the Courts of the State of New York are
interpreting -their own rules incorrectly.
Now, Mr. Sanders, you're representing whom?
MR. SANDERS : Bruce Muldoon, who is the law secretary
to the Honorable Robert Meehan, the justice of the Supreme
Court, Rockland County.

THE COURT: All right. Have you moved to dismiss?
MR. SANDERS: Yes, I have, your Honor. I filed the
papers and served them on all the parties.
THE COURT: Mr. MacCartney, there were a lot of
papers from your office yesterday. That's a motion to dismiss
on behalf of your firm?
MR. MacCARTNEY: Yes, that's right, and on behalf

of
Mr. MacCartney personally.
THE COURT: And how about you, Mr. Zamurs?
MR . ZAMURS : Yes, I made a motion also to dismiss,
your Honor.
THE COURT: All right. Now, Mr. Kashelkar, all of these parties have moved to dismiss.

MR . KASHELKAR : I understand.
THE COURT: The only rules that matter here are my rules.
You have two weeks from today's date, sir, under my rules, to put in papers explaining to me why I should not
grant the motions to dismiss. The fact that a case was adjourned in the State Supreme Court when you didn't want it
adjourned, o~ that motions were consolidated, or that you lost
in the State Supreme Court, are not reasons for me to conclude
that due process was violated here.
MR. KASHELKAR: Well, may I say --
THE COURT: You can say whatever you want.
MR . KASHELKAR :-- the decision and order of the Rockland court says that there were improprieties. It is
written in that decision.
THE COURT: But that doesn't make any difference. That doesn't mean that your constitutional right to due
process was violated. If the improprieties affected the validity of the decision, the appellate courts in New York

would have overturned it. They did not. Therefore, the impropriety, as a matter of New York law, did not affect the validity of the decision.

You had a chance to argue otherwise. That's what we mean by due process. Due process means you have a chance to present your argument, to try to prevail. That is all that

we mean by due process in the constitutional sense. So if that's all you can come up with, I can tell you that I will grant the motions to dismiss.

Now, certainly, Mr. Muldoon has other grounds, on which I'm sure Mr. Sanders moves, of judicial immunity, which extends to an employee of the Court. And I don't see how you're going to be able to overcome that.

But I'm going to give you two weeks. And by two weeks from today, you have ~o put in papers, you have to serve copies on all three of these gentlemen, you have to serve three copies on the Court, one for the file downstairs and two for in my office. That's in accordance with my rules.

Are there copies of my rules in the back?

THE DEPUTY CLERK: Yes.

THE COURT: You should take a copy of my rules.

MR. KASHELKAR: I have a copy.

THE COURT: You have a copy. Very good. So I'm actually giving you an extra day, because these motions appear to have been served yesterday. I'm giving you until two weeks from today to explain to me why you think there is a federal constitutional violation. Now, I have to tell you, there is a common misconception among lay litigants, not trained lawyers, but persons like yourself, who have an absolute right to come into court. The common misperception is that the federal courts

are here to correct wrongs that they think were done to them in the state court where they lost. That's just wrong, as a matter of law. And if you can't come up with anything other than that, I'm going to have to throw your case out. I just want you to understand that.

MR. KASHELKAR: May I make a statement?

THE COURT: You may say anything you like.

MR. KASHELKAR: It is not just that as to what I have said so far. It happened before that I was denied access to get a subpoena from Judge Meehan for the purpose of obtaining the record. Then what I've said so far, basically, mailing

what is called the false denial. Denial, I understand, can be
either true denial or false denial.
THE COURT: No, you understand incorrectly. In the ordinary course, a defendant denies the allegations of the
complaint. And all that means is: "I'm not going to admit
that what you say is true. I'm going to make you prove it."
And at law, that is perfectly permissible. It is perfectly permissible. There is nothing wrong with it. You may think
strange, but that is because you are not trained as a lawyer.
MR . KASHELKAR : But I'm not saying because I think it
is strange. I'm saying because that's what the courts of New
York have said before.
THE COURT: Well, they don't make it strange enough

to reinstate your complaint, sir.
MR . KASHELKAR : I cannot say as to what transpired in
the minds of the people who were reading my papers. It is

impossible for me to say that. I am saying that this case
arises out of denial of the protection of the Fourteenth Amendment, that the state has the obligation --
THE COURT: I hear what you're saying. You can put

it in the papers. You have as many as 25 pages to convince me. You can put in, in addition, any records from the state court that you have in your possession, any papers. Please don't give me all your filings from the state court.

MR. KASHELKAR : No, I won't.

THE COURT: But you can show me anything that you think will persuade me that there is a constitutional violation here. But a constitutional violation is a very big thing.

MR. KASHELKAR : Yes.

THE COURT: All right? And it's not just that somebody misapplied the CPLR or misinterpreted it, or that an appeals court did not do what you wanted them to after a trial court has thrown out your case. Those are not denials of due process.

MR. KASHELKAR : Perfunctory kind of action.

THE COURT: Perfunctory action is not a denial of due process.

10

MR. KASHELKAR: But it is all appearance and no substance. I mean, there may be an appearance of --

THE COURT: Mr. Kashelkar, I can't sit in judgment on whether the Court, be it the Supreme Court or the Appellate

Division or the Court of Appeals, gave your case the attention that you think it deserved.

MR. KASHELKAR: Well, it is not a case against the Court of Appeals or the Appellate Division, anyway. The case is against the individual who contributed by their own acts, by omission or commission, which gave the appearance that the due process was actually applied and/or was there in this matter. So I'm claiming it was not.

You see, the reason why anyone goes to any court is, it is not possible to provide a smoking gun kind of evidence right at the time of filing the complaint. All I can file is what is there. And I'm saying besides the civil rights, there is a RICO action that I have, and the mail fraud. And there are very many cases in U.S. Supreme Court as to what constitutes mail fraud.

THE COURT: Well, I'm familiar with those cases. I doubt very much that you can bring yourself within them. But you have 25 pages and 14 days to convince me that you can, sir. Then I will give your motion such consideration as I give to all motions. And I will decide whether or not the case is dismissed, or whether you can proceed to discovery.

But I must tell you that if you were a lawyer, sir, and if you had come into my courtroom and you had said, "I filed this case, because I don't really have a smoking gun here, but I filed a lot of different kinds of claims because I can open up discovery, and I can find the smoking gun that will convince you that what I know in my heart is right," I would, and I would have every right to, impose monetary sanctions on-that lawyer, because that is not why people are supposed to come to court.

Now, this matter is going to be taken under submission. You folks have your motion papers in. You have two weeks to get your responsive papers in.

MR . KASHELKAR : May I ask, your Honor, whether another motion for summary judgment from the MacCartneys --

THE COURT: Yes, that's correct. That's permissible. You need to file a statement in accordance with Rule 56.1 of the local rules of this Court in response to that motion. And if you don't, everything that he says in his papers will be accepted as true. That is what the local rule says. You must comply in every particular with the rules, Mr. Kashelkar.

MR . KASHELKAR : Sometime, may I get the copy of the transcript of these proceedings?
THE COURT: As long as you're willing to pay for it.
MR . KASHELKAR : Okay.
THE COURT: You make those arrangements directly with

the court reporter.
MR. KASHELKAR : And do I have to submit the response within two weeks?
THE COURT: You do.
MR. KASHELKAR : Can I get any more time?
THE COURT: I will give you four weeks.
MR . KASHELKAR : I appreciate that.
THE COURT: All right. Four weeks from today.
MR . KASHELKAR : May I inquire about the matter about the discovery?
THE COURT: There won't be discovery until I have decided this motion.
They have said that you don't even begin to state a claim.
MR. KASHELKAR : I understand.
THE COURT: Until I decide that -- if I agree with them -- and, of course, I only read their papers. But if I agree with them, then I'm going to dismiss the case. And therefore, there can be no discovery.
And I've already told you that I'm not a super appeals court looking at how the state court applies its own

rules. That's not what I'm allowed by Congress to do.
MR. KASHELKAR : I'm not even claiming that. I am questioning the actions of the people who are not parties to
that claim. That's all. I'm not saying these same defendants
were parties to that action. So whatever may have happened in

14

that action, that action, as far as that action, I'm not asking to reverse the judgment.
THE COURT: All right, Mr. Kashelkar. Submit your papers in four weeks. I'll want brief replies.
MR. KASHELKAR: Your Honor, may I --
THE COURT: No, I've talked to you for a half hour. I need to --
MR. KASHELKAR: One question.
THE COURT : Yes.
MR . KASHELKAR : How soon I have to serve the papers
on the counsel?
THE COURT: You serve it on them the same day you
serve it on me, four weeks from today. If you get it done
earlier, you can --
MR . KASHELKAR : Do I have a return date?
THE COURT: There is no return date. Under my rules,
I take motions under submission unless I feel a need for oral

argument. I think I probably will be able to decide this on
the papers.

MR . KASHELKAR : May I request oral argument?
THE COURT: You may request it, but I don't automatically give you oral argument. So put it in your papers, sir. Ordinarily, I don't hear oral argument on motions. It's a very rare motion where I hear oral argument.
All right?

15

MR. KASHELKAR : Thank you.
THE COURT: That's in my rules, too.
Now, I want brief replies. I think that I'm familiar enough with these kinds of issues. I've had several of these cases recently. Don't try to re-invent the wheel on the replies, since I have 16 boxes of materials in the back. All right?
MR. SANDERS: If we choose not to reply, is submission of a letter --
THE COURT: Submission of a letter will be quite satisfactory. And Mr. Sanders, I'll be very happy to see that.
MR. SANDERS: Fine
THE COURT: All right ?
MR. SANDERS: Yes.
THE COURT: All right. Thank you.
MR . KASHELKAR : May I ask one question?
THE COURT: Yes, sir
MR . KASHELKAR : In consideration of the fact a number of documents have been submitted on the record, in order to avoid re-submitting these documents, may I refer to

those
22 documents?
23 THE COURT: Oh, you absolutely may.
24 MR . KASHELKAR: I don't want to make two submissions.
25 THE COURT: I would appreciate if you would do so.

1 Thank you.
2 MR. KASHELKAR: Thank you.
3 ALL COUNSEL: Thank you, your Honor.

I (WE) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of the proceeding.

Sd. Mary M. Stanton
Official Court Reporter
U. S. District Court

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
300 QUARROPAS STREET WHITE PLAINS. NY 10601

914-390-4146

CHAMBERS OF COLLEEN MCMAHON
DISTRICT JUDGE

10 December 1999

Ashok Kashelkar 6 Innington Court

Spring Valley, New York 10977

Re: Case No.99 Civ. 5132 (CM)

Dear Mr. Kashelkar:

This Court has received your filings, made December 6, 1999, in opposition to the motions to dismiss or for summary judgment that have been made by each of the defendants.

Because the MacCarthy law firm has moved for summary judgment, I am required by a recent ruling of the United States Court of Appeals to advise you that judgment will be entered against you dismissing your complaint if you do not establish the existence of a genuine issue of material fact (material in the legal sense, not necessarily material to you) so as to compel a trial in this action. You must do this by providing evidence in the form of testimony, affidavits and/or exhibits for consideration by the Court. You may not rest on conclusory statements.

By sending you this notice, I do not mean to suggest that you have done precisely what is required of you. You have sent me a box of affidavits, exhibits and records from State court proceedings that you believe to be relevant to your constitutional claim. However, you are proceeding pro se and I wish to comply in every particular with this new ruling of our Court of Appeals. Therefore, if you believe that there is any evidence to support your claim that you have not already sent to me, or if you find, on reviewing your submission, that some of your "evidence" is in fact conclusory and therefore inadequate, this is your last chance to correct matters. You have until next Friday, December 17, to send in anything else you believe would be required under the pertinent Federal Rule of Civil Procedure (Rule 56) to defeat the motion for

summary judgment.

This notice does not apply to any motion to dismiss made under Rule 12 of the Federal Rules of Civil Procedure.

A copy of this notice is being sent to counsel for all of the defendants.

Thank you for your attention to this matter .

Sd_____
Colleen McMahon
cc: J. David MacCartney, Jr.
MacCartney, MacCartney, Kerrigan & MacCartney
13 North Broadway
P .0. Box 350
Nyack, New York 10960

Charles F. Sanders
Assistant Attorney General
Office of New York Attorney State Attorney General
120 Broadway
New York, New York 10271-0332

Karl Zamurs
Garcia & Stallone
Greenway Plaza Office Park One Greenway
135 Pinelawn Road, Suite 220N
Melville, New York 11747-3160

Case No. 1.... Kashelkar v MacCartney

I filed my Motion with affidavit, dated March 16, 2001. It is produced below. This was submitted with Motion form Page 18, 19 and 20 of Appendix B.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ASHOK KASHELKAR — Docket No. 00- 7090

Plaintiff - Appellant

-against -

Affidavit in support of Motion

HAROLD Y. MacCARTNEY, ET AL

Defendant' Appellees

Motion to Reconsider, Vacate or Modify this Court's decision of March 09,2001 and the Mandate of March 09,2001; pending a final decision by this Court on Request for granting a "Petition for En Banc hearing" and kindly accept my petition for En Banc hearing.

I, ASHOK KASHELKAR, Pro Se Plaintiff Appellant; in the within matter; am fully familiar with the proceedings heretofore had; deposes and states as follows:

1) On March 14, 2001; I received decision of this Court; entered on March 09,2001; that has denied my previous motion to "enlarge time" to serve and file a petition for En Banc Hearing. The same is attached hereto as Exhibit 01.

2) The "decision" itself shows, that my motion papers were received in the Court, on Feb. 21, 2001.

3) The motion requested [as reflected on the same paper], enlargement of time from Feb.23, 2001 to March 09, 2001; to prepare and serve my Petition for En Banc hearing.

4) I did not receive any response to my above motion, till March 14, 2001. The attached copy of the envelop will show that, it was "placed in the U. S. Mail on March 12,2001".That is my Exhibit 02.

5) Based upon my understanding of the FRAP Rule 35; I filed the motion and continued to work on the petition for En Banc hearing, subsequent to filing the said motion.

6) I proceeded to prepare the "arguments" as I assured the Court, through my affidavit, in support of my petition for En Banc hearing; for service by March 09, 2001 ; without waiting for "any decision", from the Court, on my motion.

7) I was also working, to ensure that, I would have the bare minimum income to support my family and myself; during the entire period, since I served the Motion papers, on Feb. 17, 2001. Of course, I continued my work on the petition, at the same time, that included some more research.

8) During the week beginning March 05, 2001; the "predictions of snow storm of the century" disturbed my "overall" activities, like those of several millions other people in this region.

9) By late afternoon, on the 6th of March, 2001; I realised that, after reading the FRAP Rule 35 again and again, it appeared to me, that I may not have to submit "extensive arguments" since most have already been offered [the Motion Practice] in USDC and

continuing to the previous Petition for Panel Re Hearing, that "summarily" was denied on Feb. 09, 2001. But I was not certain about "my understanding of the FRAP Rule 35".

10) I do not have any advisors and or consultants available, to discuss the "meanings and implications" of each and every rule.

11) In order to ensure that, I do not " default " in the matter and therefore; primarily and solely to protect my own interests, rights and property; I proceeded to prepare the Petition, comprising of "list of over 150 cases decided by the U. S. Supreme Court, in the last 200 years; 20 cases decided by this Court and 6 cases decided by other Circuit Courts".

12) Based upon my new understanding, I prepared my observations relating two cases, decided by this Court; and those the USDC cited, in reaching it's decision in my case; which I found are subject to questions and contravene the decisions of U. S. Supreme Court and one decided by the New York State Court of Appeals, as well as some of the Federal and State Statutes.

13) I completed, the petition on the night of March 08, 2001 and the receipt from KINKO, shows, the copies were made a 11.32 PM. The receipt from KINKO will form my Exhibit 03.

14) Friday, the 9th of March was another "snow event" in my area, if not in New York City; I spent most of the day, in correcting the "petitions" in RED INK; that is evident in each petition, now, on the Court's record.

15) I went to the Monsey, NY Post office and mailed the Petitions to all parties\counsels and this Court. The

"time" is reflected in the U . S. P. S. cash receipt. Exhibit 03.

16) By the time, I mailed the petitions, I was not aware of the "decision" this Court had, reached "on that day".

17) Proof of Service by U. S. Mail, in the nature of"Stamped USPS Form 152, March 1999";showing my mailing the petition is attached hereto as

Exhibit 04.

18) I have also received copy of the Mandate of this Court, dated March 09,2001, with "adjusted amount" of$ 404.94; taxed and payable to MacCartney et al. [two pages] Exhibit 05.

19) In view of the fact, I have always pleaded that, the decision of the USDC was issued in error and in contravention of the U. S. Supreme Court cases; the thrust of my arguments, have always been that, the decisions and the judgements of the USDC have been in violation of the U. S. Supreme Court decisions.

20) It is also correct, that, my "motion to enlarge" the time was "received in the Court" on the 21st of February, 2001 but was not acted upon till the March 09,2001; that crucial passage of time, was not within my control.

21) I do not have any say or control as to how the administration of the Court functions.

22) It is also correct that, I served my Petition for En Banc hearing, as per my promise on the 09th of March, 2001; I lived up to my word.

23) I did not have any knowledge of the Courts decision, till March 14, 2001 and I should not be held accountable, nor be compelled to suffer consequences

of the decision, on March 09,2001.

24) Since, I have also claimed that, by the failure and refusal of the USDC in enforcing the laws of the Congress, by abiding by the decisions of the U. S. Supreme Court decisions and also the New York State Laws and Decisions of the New York State Court of appeals and other appellate as well as lower Courts, I have cited ad nauseam, in the USDC motion practice and in the appellate process; I am denied "equal protection" guaranteed by the Fifth Amendment of the U. S. Constitution, in this Judicial proceeding.

25) Besides that, the most recent decision, has denied my request to "enlarge time" to serve and file the Petition for En Banc hearing.

26) The Courts decision is not clear to me, is ambiguous as to whether the Court has rejected my right to serve and file a "Petition for En Banc hearing" or not.

27) My request, to enlarge time, was filed within five days, on Feb. 17, 200 I; upon my receiving the "decision of denial of Panel hearing" on Feb. 12, 2001. I believe that my request has been consistent with FRAP Rule 26(b).

28) Rights to a "Petition for En Banc hearing" is clear in F ARP Rule 35 and the "automatic consideration of request for En banc Hearing" is implicit in FRAP Rule 35(b)(3); in view of the fact, I did file my request for Panel Rehearing, that was denied, without any comments.

29) It is most interesting, that I must mention that, a paper, giving address of the Supreme Court Of The United States and telephone number of it's Clerk's

office, has been attached to the decision.

30) I am aware of the possibility of going to the U.S. Supreme Court.

31) It is therefore absolutely necessary for me to state that, while my right to come to this Court is a statutory and therefore a constitutional right, I do not have such right available to go the U. So Supreme Court.

32) Each and every members of this Court, is far more versed in the procedures and is fully aware of the Rules, Laws and the Constitution, than I am.

33) This Court is perfectly aware that, barely 1% of all the "petitions or writs" reaching the U S. Supreme Court are accepted for review and possible resolution.

34) The U. S. Supreme Court may not accept a case, merely because there has been "an error of law" in the lower Courts. While denying the petitions and writs, the U. S. Supreme Court does not "comment" about the merits" of the case underlying the petition to the U. S. Supreme Court.

35) This Court, more than the USDC has specific powers granted by 28 USCS 2106 and those powers are truly multidimensional.

36) In my petition, I have always said, that, in the event this Court cannot reach a decision it legally must reach or does not wish to reach, then this Court should "certify" to the U. S. Supreme Court, for resolution, as provided for under U. S. Supreme Court Rule 19.

37) May I respectfully urge this Court, not to "shun" my case and affirmatively resolve it as the U. S. Supreme

Court decisions and Laws of The U. S. Congress mandate.

38) I do not see, how cause of Justice is "served" by treating me in this fashion and what "rationale" exists, for such a treatment, to me.

39) I trust I am not overstepping any "boundaries" but it is my solemn duty to approach this Court, with this plea.

40) I trust, the decisions are not "retaliatory" in nature, on account of my aggressive language in my presentations heretofore; which may have offended sense of one or more Judges of this Court.

41) What I receive on a daily basis is far more graphic in nature and I cannot reproduce it on this record.

42) My legitimate grievances arise out of such continuing offensive conduct towards me and If I may say, against numerous others, that is our life. There is no recourse.

43) I am here to "redress my grievances" as provided for in Constitutional manner .

44) Under the above circumstances may I request this Court to grant following relief:

1) Kindly vacate the mandate, the Clerk's office issued on March 09,2001 ; or

2) In the alternate, modify the "mandate" and issue a stay order, for it's enforcement; pending final determination, in "unambiguous Court decision" as to my request for granting a Petition for En Banc Hearing.

3) To accept my Petition for En Banc hearing, for

consideration; that I have filed on March 09,2001; that was filed before I had any knowledge of this Court's decision I received on March 14,2001.

4) Grant my Petition for En Banc hearing and to resolve the matter, as the Constitution and the Laws of Congress as well as the decisions of the U. S. Supreme Court mandate.

5) In the event, this Court denies my request for En Banc hearing, this is my further request to this Entire Court, to outline each and every reason and basis for it's decision to "affirm the Decision and Judgement of the USDC", *beyond the language of "substantially for same reasons"* in it's Summary Order of November 07, 2000; that may offer me an opportunity to approach the United state Supreme Court, for proper resolution.

6) In the alternate, to certify questions to U. S. Supreme Court, pursuant to USSC Rule 19; for resolutions by U. S. Supreme Court, that will "truly" serve millions.

Wherefore, in view of the facts, as stated herein, may I respectfully request to grant me all the relief I have requested in this affidavit and to grant such other relief that is consistent with the principles of Equitable and Substantial Justice, consistent with the Laws of the Land, in effect in this Jurisdiction.

Spring Valley, NY Sd_____

March 16, 2001 Ashok Kashelkar

Sworn to before Sd_____

Rhonda L. Macpherson

Notary Public, State Of New York
No.01MA 6003077
Commission Expires 2/23/2002

My second affidavit, in MacCartney matter, dated March 23, 2001, referring to various issues. This was returned in it's entirety, without "filing or presenting to the Judges of the Court Of Appeals".

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ASHOK KASHELKAR Docket No. 00- 7090

Plaintiff - Appellant

- against -

Affidavit in support of Motion

HAROLD Y. MacCARTNEY, ET AL

Defendant \ Appellees

Motion to Reconsider, Vacate or Modify this Courts decision of March 09, 2001 and the Mandate of March 09, 2001; pending a final decision by this Court on Request for granting a "Petition for En Banc hearing" and to kindly accept my petition for En Banc hearing.

I, ASHOK KASHELKAR, Pro Se Plaintiff \Appellant; in the within matter; am fully familiar with the proceedings heretofore had; deposes and states as follows

1) This is another affidavit, in the "within cited" matter, prompted on account of my receiving this Court's Mandate from the Office Of the Clerk, for USDC,

SDNYat White Plains, NY mailed on March 20, 2001. Copy of the entire "package" received from USDC-SDNY is attached hereto as [continuing number for Exhibits] Exhibit No.6.

2) On March 14,2001; I received decision of this Court; entered on March 09,2001; that denied my Feb 17, 2001; motion to "enlarge time" to serve and file a petition for En Banc Hearing. On March 17, 2001; I have filed my motion, to Reconsider, vacate or to modify this Court's March 09,2001 decision and "stay" enforcement of the mandate.

3) May I respectfully refer to my March 16, 2001 affidavit; for pertinent details of my "serving & filing [by mailing]" the Feb. 17,2001 motion; it's receipt by this Court and the subsequent events, resulting in this Court's decision and mandate dated March 09, 2001; as reflected, in the Court's record and the U. S. Postal Service Record; attached as Exhibits to my Motion of March 17, 2001.

4) My last affidavit may not have clearly stated but the Court record reflects [as a matter of fact] that, I have completed, corrected, assembled, served and filed [mailed] a "similar" Petition for En Banc hearing, on March 09, 2001; in the second matter, under this Court's Docket number 00- 7751; entitled Ashok Kashelkar v Rubin & Rothman, et al.

5) Service and filing of my "Petition for En Banc Hearing" under 00- 7751, on March 09, 2001; was pursuant to my "similar" Motion to enlarge time, that I served and filed, on Feb. 17, 2001; for which I never received any response from this Court.

6) It was necessary for me to spend time to correct the original and all copies of the petition in the 00-7751 matter; on March 09, 2001; prior to serving and

mailing them to the counsel for the defendants\ appellees and this Court, in that matter. Copies of the Petition for 00- 7751 were also made at Kinko' s on March 08, 2001 ; as the receipt in Exhibit No. 3 reflects, attached to my March 16, 2001 affidavit.

7) The Mandate of this Court, dated March 09,2001, that I received from this "Court", on March 14, 2001; included only ONE ITEMIZED & VERIFIED BILL OF COSTS; "adjusted" to $ 404.94; [payable to MacCartney defendants] under the signature of Arthur M. Heller; Administrative Attorney. That has previously been attached, as my Exhibit No.5.

8) The USDC-SDNY "package" I have received, contains another "Bill Of Costs" of $ 294.98; payable to Garcia & Stallone; that is not "Adjusted" or "certified" by any official of the Court Of Appeals; as is reflected within Exhibit No.6, herein.

9) I did serve and did file my Feb. 17,2001 motion, in timely manner, with legitimate reason [that I need some time to work, to earn for living] while requesting time to enlarge, for filing my "Petition for En Banc hearing".

10) If there are any laws, rules or Constitutional Provisions[either of N. Y. State or that of the United States] as well as "any" decisions of the U. S. Supreme Court or the New York State Court Of Appeals; imposing a burden on any litigant; to forego the essential requirements of litigant's working to support his family, compelling the litigant to deprive him, of his "rights, property and liberty"; while pursuing judicial resolution, through the Constitutionally protected process of "vindicating and redressing" his Constitutional Rights, to preserve Liberty and Justice"; the same may kindly be cited, in a formal decision; under clear and authentic signatures

of Judges of this Court.

11) I have made this statement, on account of the "ambiguous" [at least to me] decision, of this Court, "beyond my understanding"; dated March 09, 2001, denying my simple request, for extension of time [for reasons cited in my affidavit of Feb. 17,2001]; and the subsequent "MacCartney" opposition, served through an affirmation dated March 20, 2001; calling my motion to be without any merit and asking for a penalty of$ 250.00, upon me, under FRAP Role 40.

12) Defendants MacCartney et al, have repeatedly requested, a penalty upon me, for my pursuing the "Constitutionally Guaranteed Judicial Process"; throughout their opposition, in these proceedings and "the record would reflect" and I must say, is "quite consistent with their peculiar methods and quality of law practice [for which the proof is on the record of this Court], that has reflected in all the Judicial proceedings, since 1995

13) May I suggest, that, the approach of the defendants\ appellees herein, is not any different than the approach and life style of all the "students" [responsible for] in the now famous numerous "shootings" in the schools, across the United States, over the last several years.

14) If the attorneys admitted to "practice laws", in the Courts have clearly demonstrated their own "practice and promotion " of "incredible misconduct" of every nature, forbidden by and in violations of the laws, in effect, [reflected on the record of this Court] over an extended period of time; no wonder the younger generations cannot see anything wrong in "their own actions", to shoot others, in the schools or elsewhere. This is a matter of fact and is not an argument. Apples always fall near the tree [that is also a fact].

15) As the "contents" of the Exhibit No.6. herein, compared with Exhibits 1,2 and 4; clearly show, that the March 14,2001 mandate, I received from this Court, did not contain the "Bill Of Costs" payable to Garcia & Stallone.

16) I do not know, how the "Administrative Offices" of this Court function; but I would respectfully suggest, that, in the least the "Bill Of Cost" for Garcia & Stallone has not been "reviewed, adjusted and certified", consistent with the Court's rules.

17) I have also said before and will repeat here, that, I should not be compelled to bear, nor suffer consequences; for the lapses in the administrative functions in the offices of this Court.

18) I am not certain, whether, I should have just sent a letter to this Court and bring the matter to the attention of this Court, for further relief.

19) I considered, it to be proper to "file this motion", for the relief, to avoid any "default" on my part.

20) A copy of this "motion" is being served upon the Office of the Clerk, USDC-SDNY; for their information and record.

21) Under the above circumstances may I request this Court to grant following relief:

1) Kindly vacate the "entire" mandate, the Clerk's office issued on March 09, 2001;

Or

2) In the alternate, modify the "mandate" and issue a stay order, of it's enforcement; pending final determination, in "unambiguous Court decision", as to my request for granting a Petition for En Banc Hearing.

3) To accept my Petition for En Banc hearing, for consideration; that I have filed on March

09,2001; that was filed before I had any knowledge of this Court's decision, I received on march 14,2001.

4) Grant my Petition for En Banc hearing and to resolve the matter, as the Constitution and the Laws of Congress as well as the decisions of the U. S. Supreme Court mandate.

5) In the event, this Court denies my request for En Banc hearing, this is my further request to this Entire Court, to outline each and every reason and basis for it's decision to "affirm the Decision and Judgement of the USDC", beyond the language of "substantially for same reasons " in it's Summary Order of November 07, 2000; that may offer me an opportunity to approach the United state Supreme Court, for proper resolution.

6) In the alternate, to certify questions to U. S. Supreme Court, pursuant to USSC Rule 19; for resolutions by u. S. Supreme Court, that will "truly" serve millions.

Wherefore, in view of the facts, as stated herein, may I respectfully request to grant me all the relief I have requested in this affidavit and to grant such other relief that is consistent with the principles of Equitable, Equal and Substantial Justice, consistent with the Laws of the Land, in effect in this Jurisdiction.

Spring Valley , NY
March 23, 2001

Sd_____
Ashok Kashelkar
Appellant ProSe

Sworn to before Sd_____

TERRY A HOLMES
Notary Public. State Of New York
No-4993275

Qualified in Bronx County
Commission Expires March 09, 2002

The following correspondence, initiated by the Second Circuit Clerk's office- throws light, on the the employees of U. S. Court Of Appeals "INTERFERING IN THE JUDICIAL PROCEEDING" in violation of Numerous Federal Statutes and violating my constitutional Rights.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Office of the Clerk
40 Foley Square
New York, New York 10007

Re: Kashelkar v. MacCartney Docket No.: 00- 7090

Date: April 6.2001

Dear Mr. Kashelkar:

This is to acknowledge receipt of your motion for Supplemental Motion Reconsider, vacate this Court's decision and to Modify or Stay enforcement of Mandate requesting relief in the case referenced above. Because this case was mandated on March 9, 2001, and your motion for an extension of time was also denied, this Court no longer has jurisdiction to act on this matter. For this reason, your papers are returned unfiled.

Please be advised that the continued submission of papers in closed cases may result in sanctions from the Court.

Sincerely

Roseann B. MacKechnie, Clerk
by: Sd_____
Beth J. Meador, Administrative Attorney
Enclosures
cc: Acco File

Ms. Meador <u>RETURNED my March 24, 2001 Motion</u>, of which my affidavit of March 23, 2001, was a part, with her above letter. [Copy of the Motion form, showing it's receipt in CA2NY, on March 27, 2001; is attached, after this page]

This motion was NOT FILED, by the Clerk's office and was never submitted to the Judges of the Second Circuit.

I wrote the following letter in Response- to the Clerk

Ashok Kashelkar
6 Innington Court
Spring Valley NY I 0977

By Certified Mail R. R, R.
70993400000416964682

April 17, 2001

Roseann B. MacKechnie Clerk
United State Court Of Appeals
Foley Square New York NY 10007

Re: Appeal Docket No. 00- 7090
Kashelkar \. MacCartney. et a1

Dear Ms. MacKechnie,

I received a letter, dated April 06,2001[mailed in New York on the April 10, 2001], from your office, on Saturday April 14, 2001, returning my March 24, 2001 "supplemental motion"; under the signature of Administrative Attorney Beth J. Meador and have noted the contents.

May I respectfully disagree with the thrust and substance of the letter, for following reasons and offer some observations and ask for clarification.

1) I received this Court's ..mandate" dated March 09, 2001. [mailed from your office on March 12, 2001] on March 14,2001, after coming home in the evening

2) On March 16, 2001, I prepared, served and mailed my Motion to Reconsider, Vacate or Modify and Stay the mandate. I have not heard anything about this "original" motion, so far.

3) Then, subsequently, I received the "Mandate" from the USDC- SDNY - WP , that included a "Bill Of Costs" of defendants, OMCDOC that is not "examined or certified" by anyone, in your office, as

FOR THE SECOND CIRCUIT

Each motion should be accompanied by a supporting affidavit with statement of issues. (Local Rule 27(a))
Include brief statement of facts with page references to the moving papers.

Ashok Kashelkar
Plaintiff / Appellant

-against-

Harold Y. MacCartney, et al

Use short title

00-7090
Docket Number

MOTION INFORMATION FORM

Motion for Supplemental Motion Reconsider, vacate this Court's decision and to Modify o: stay enforcement of Mandate

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Ashok Kashelkar Plaintiff / Appellant

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Please see attached

Has consent of opposing counsel:

A. been sought? ☐ Yes ☑ No
B. been obtained? ☐ Yes ☑ No

Has service been effected? ☑ Yes ☐ No

Is oral argument desired? ☐ Yes ☑ No
(Substantive motions only)

Requested return date: N. A.
(See Second Circuit Rule 27(b).)

Has argument date of appeal been set: N. A.

A. by scheduling order? ☐ Yes ☐ No
B. by firm date/argument notice? ☐ Yes ☐ No
C. If yes, enter date: N A

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

NOT APPLICABLE

Has request for relief been made below? ☐ Yes ☐ No
(See F.R.A.P. Rule 8.)

Any previous request for similar relief made to the 2nd Circuit? ☐ Yes ☐ No

Would expedited appeal eliminate need for this motion? ☐ Yes ☐ No

If no, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☐ No

Judge or agency whose order is being appealed: USDC-SDNY 99 CIV 5132, Decision and Judgement of Hon. McMahon J. and subsequent decisions of this Court

Brief statement of the relief requested: Reconsider or vacate this Court's summary decisio of March 09, 2001 and to Vacate, Modify or Stay "enfordement pf Mandate" dated March 09, 2001. Affidavit attached.

By: *(Signature of Attorney)*
Signed name must be printed beneath.
Ashok Kashelkar

Date: March 24, 2001

Appearing for: *(Name of Party)*
Pro Se

Appellant or Petitioner: ☑ Plaintiff ☐ Defendant

Appellee or Respondent: ☐ Plaintiff ☐ Defendant

ORDER

Kindly leave this space blank.

BEFORE:

IT IS HEREBY ORDERED that the motion be and it hereby is granted denied.

Date

For the Court:
CAROLYN CLARK CAMPBELL, CLERK

By:

BEST AVAILABLE COPY

the other "Bill of Costs for MacCartneys, has been".

4) That [uncertified "Bill of Costs.'] prompted me to serve the "supplemental motion" dated March 24, 2001 ; that you have returned to me with warning about penalty.

Now, I would like to observe the following:

A Provision is made under FRAP 26(b) for extension of time " for good cause".

B I offered the "good cause- that I need to work a little to support my family"- in my motion dated Feb. 17. 2001 [that was timely served and filed] and requested time of just two weeks. from Feb. 23, 2001 to March 09.2001, to file the "Petition for En Banc" hearing. [working to support is a "basic right", that I need not argue, with memorandum of laws]

C I received orders, *in Both The cases before this Court,* [00- 7090 and 00- 7751] denying my "Petitions for Panel Rehearing", dated Feb. 09,2001 ; which required my serving and filing the "Petitions For En Banc Hearing on Feb. 23.2001.

D I considered it "impossible" under the circumstances, fully described in my affidavit, dated Feb. 17, 2001.

E I mailed my Petitions For En Banc Hearing on March 09, 2001; in both the matters, that I completed [finished and printed]on March 08,2001 and March 09, 2001.

F I have also shown, that, even though I requested 'just two weeks time" to "perform the act" of serving and submitting the Petitions For En Banc Hearing, the decision on that request [denying extension of time] was made on March 09, 2001.

G The decision [para F] was placed in Mail on March 12, 2001, in New York City".

H That is precisely the date, my "Petitions For En Banc Hearing" were already "received in this Court".

I My request, in the Affidavit of February 17, 200 1; to the effect that **I need some more time to work** is quite proper .

J FRAP Rule 41(d)1 state that, a "party may move" to stay mandate ..... and request for "extension of time to file a Petitions For En Banc Hearing", is not excluded by FRAP 41... and in fact is also referred to [and therefore supported by] in FRAP Local Rule 27(c).

K Therefore, in my view of"simple reading of the rules", my filing the petition to "stay" the mandate [by a motion of March 16, 2001] is quite proper.

L My "original" Motion to "stay the Mandate" is dated March 16, 2001 and that is still in the Court and NOT YET DECIDED.

M My "Petitions For En Banc Hearing" in this MacCartney mater is also in the Court: that is served

and filed on March 09. 2001; that is received in the Court, before I served my "motion to stay mandate" on March 16, 2001.

N Since, I served and filed my Feb.17, 2001 motion [that also bears a '"FILED" stamp of Feb. 21,2001 for this Court], before the "time to serve and file the "Petitions For En Banc Hearing.' was expiring on Feb. 23,2001; it certainly was "served and filed" timely, for "extension of time".

There are two aspects, in every motion:

A (1) Serving on parties [my responsibility]

(2) and filing [that permits.. Placing the papers in the custody of US Postal Service]

B Consideration by the Court. [that is a Judicial Decision]

Let me analyse aspect " A(2)";

that concerns the functions of this office, subject to FRAP Rule 45; and

In view of the "FACTS as they exist" I would like to know the following:

1) What is the criteria, for the personnel in your office to 'present" the motion papers to the

"Judicial Authority" ?

2) Was that "criteria" properly met in the "presentation of my motions" dated Feb. 17, 2001, to the Court, for it's consideration, in timely manner ?

3) If my request, for extension of time [filed in the Court on Feb. 21,2001], from Feb. 23,2001 to March 09,2001 was "timely and properly" [permitted under FRAP 26] made, *may I know,* on which date, it was "presented" to the Court ? I understand that, there are criteria, as to preferences... but is there a criteria whether to present one to the Court or not ?

4) May I also know, as to why was it not considered by the Court till the March 09, 2001 ?

5) If the Court, for whatever reason, was unable to reach it's decision till March 09. 2001, can you explain to me in every detail how am I held responsible for that ?

6) Can you please explain to me, as to why should I be the one to "bear the burden. for the decision of March 09,2001 ?

7) Since the decision of the Court, was "mailed on March 12, 2001" that in itself is *"post facto "* compared to the Court's receiving my

"Petitions.. on March 12, 2001.

8) Is there anything, this [or any] litigant could have done to ensure that *the Court will hear* the "extension request" in timely manner ?

9) Given the fact, that, I served and mailed the "Extension of Time" motion on Feb.17, 2001; after actually receiving "it" [the Feb. 09, 2001 denial], in my hands on Feb. 12, 2001; is there any basis, to construe that, my serving and mailing the motion papers on Feb. 17, 2001, was in any way not acceptable ?

10) If there are any reasons [as far as the procedural aspects, of my serving, mailing on Feb. 17, 2001 and then the "filing" by this Office on Feb. 21, 2001"] was beyond the purview of the FRAP 26 or FRAP 41, may I request your office to "specifically point to those matters" ?

11) The "order denying my extension of time" to serve and file, the"Petitions For En Banc Hearing *"does not offer any reason* whatsoever, for the decision .

12) Is there any "hit or miss" type of movement of papers, in your office ?

Under the circumstances, with complete understanding that, the Court has all the authority to impose a penalty upon, me, for violating the rules; I am trying to understand, "what have

I done wrong, in this process, that calls for a penalty , upon me "?

It is axiomatic that, every element of every rule must also be complied with, by every person, that has any connection with the "motion papers", prior to arriving at a decision to impose any penalty upon me.

Otherwise, imposition of a penalty upon me [a "monetary" or "denial of a right for extension of time"] is not much different than King Henry the VIII's decision to behead, Sir Thomas Moore, in 1534 or so. Of course, Oliver Cromwell was responsible for H. H. Henry's decision.

Nor should it be, similar to a Police Officer stopping a car , on the road, at night, breaking a tail light "with his gun" and issuing a "summons to the driver for driving without proper lights."

I want to know, how the "denial of my right for extension of time" came about ?

We are back to "due process" problems, in the Judicial Proceedings, in this Court.

Since we are discussing the RULES, I would like to know, if I am the only one to "observe each one of them assiduously." while others cannot or need not ?

It is NOT enough that, I am engaging in arguments, with the defendants ?

It should not be necessary for me to "engage in arguments" with your office.

I need not offer a "cohesive memorandum of laws" with this letter.

I am trying to understand "exactly" as to the "actual problem", in the "system".

All I am asking is, for rectification of a mistake.

If that is wrong, please inform me, with every applicable reason.

Respectfully submitted,

Sd_____

Ashok Kashelkar

Plaintiff-Appellant \ Pro Se

I received the following response from Ms. Meador

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Office of the Clerk
40 Foley Square
New York, New York 10007

Re: Kashelkar v. MacCartney
Docket No.: 00-7090

Date: April 26, 2001

Dear Mr. Kashelkar:

This is to acknowledge receipt of your letter of April 17, 2001, which was referred to me for a response. First of all, petitions for rehearing en banc are due at the same time that the petition for rehearing is filed. (See Fedl. R. App. Proc. 40.) If one wishes to have a petition for rehearing followed by a petition for rehearing en banc, one must file a "Petition for Rehearing and a Petition for Rehearing En Banc".

Our record shows that the court rendered judgment in your appeal on November 7.2000. On November 20, 2000, you filed a motion to extend the time for filing your petition for rehearing..

On December 4, 2000, that motion was granted and you were given until December 15, 2000 to file your petition. You did not file your petition until December 18, 2000. Despite the fact that you were late filing the petition, it was submitted to the judges on the panel that heard your appeal. On February 9, 2001, the panel directed me to issue an order denying your petition for rehearing. This is a decision that is entirely within the Court's discretion. Whether or not a petition is filed on time or not, the Court may decide to deny it.

Furthermore, Since you had not requested a rehearing en banc. the 12/18/00 order became the final order of this Court, and the mandate was issued (in accordance with the Federal

Rules of Appellate Procedure) on March 9, 2001.

This case is now closed. Therefore, as I advised you in my previous letter, the Court no longer has jurisdiction in this matter. Any papers submitted in an attempt to continue this litigation will be returned to you.

Sincerely,

Sd_____
Beth J . Meador

cc: Acco File

I considered Ms. Meador's letter to be absolutely wrong and wrote the following letter to Ms. Meador.

Ashok Kashelkar
6 Innington Court
Spring Valley NY 10977

By Certified Mail R. R. R.
7099 3400 0004 1696 4590

May 05, 2001

Beth J. Meador- Administrative Attorney
Office Of The Clerk
United State Court Of Appeals
Foley Square
New York NY 10007

Re: Appeal Docket No. 00-7090
Kashelkar v MacCartney, et al

Dear Ms. Meador,

This is acknowledge your letter of April 26, 2001.

It would appear that, I may have "misunderstood" the FRAP rules, relating to the "Request For En Banc Hearing".

It is also accurate, that, in the "Petition for Rehearing"; that is dated De. 13, 2000; on page 2 and para marked 8) have stated, that:

> "In the event, this Court, for any reason does not wish to reach a decision, that should "legally" be reached; then this appellant respectfully requests this Court....
>
> 1) to certify the question, for resolution for "En Banc" hearing **or**
>
> 2) certify to the U. S. Supreme Court.

Even though my "request" may have been "somewhat unusual and unorthodox in it's form" it must be admitted, that,

> I DID REQUEST THIS COURT, to conduct EN BANC hearing.

May I know, whether, that request "counts" or not ?

Besides, I have requested, through a "Motion, dated March 16, 2001" to "reconsider, vacate, modify the decision and also to "stay enforcement", of the mandate. Such request conforms to FRAP.

I have not yet received any decision on the motion.

Can I receive a "written decision" ?

This motion should not be treated like U. S. Presidents have treated [dealt with and rejected] some legislation by their Pocket Veto [at least in the past] till there was an "outcry" from the Congressional Leaders and the News Media.

Assuming that, this Court, "does not wish to reach a decision, it must legally reach" it is most essential, that "proper record" is available for me, to consider the next step of a Petition to the U. S. Supreme Court. It would not sound a good idea, for me to claim [in my Supreme Court Petition], that, the 2nd Circuit treated me with a "Pocket Veto".

As you are aware, in the other case, Docket No. 00-7751 entitled Kashelkar v Rubin & Rothman, the matter will be considered by the Entire Court-whether "to hear it En Banc" or not.

You have more than enough knowledge and understanding, that, most of the issues, I have raised in my appeal, have already been decided by the Supreme Court [since 1803 in Marbury v Madison]and therefore, "enforcement" is the only question, left open.

Denial of the "enforcement" in the Judicial System [I have enough experience in the State system AND now in the "Federal System ?"] is probably the "most disastrous" experience, that will certainly "undermine" the democratic foundation. This plea is always ignored. But it certainly makes a difference.

The "Supreme Court" in **"Amistad"** [I have sent excerpts from the case in 00-7751] refused to declare the "free human beings" to be "slaves of Mr. Cruz and others". Now we have the 13th Amendment, prohibiting that.

Is it wrong for me to "seek justice, based upon the laws" ?

Ms. Meador, please bear with me. Please do not get upset for my raising such issues. But each one of them means a lot. I am just "another Pro Se" pursing litigation that may benefit others [it is in fact welcomed by the Supreme Court, see Rotella v Wood 528 US 549, 559.. Wherein the Court referring to the Clayton Act observed... "rewarding the swift who undertake litigation in the public good"

I await your response and remain,

Sincerely,

Sd_____
Ashok Kashelkar

And received the following response, indicating that the March 16, 2001, motion "was ALSO not FILED".. In FACT, it was filed on March 19, 2001 [as can be seen in Appendix B page 18]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Office of the Clerk
40 Foley Square

New York, New York 10007

Ashok Kashelkar
6 Innington Court
Spring Valley . NY 10977

Re: Kashelkar v. MacCartney Docket No.: 00- 7090

Date: May 7.2001

Dear Mr. Kashelkar:

This is to acknowledge receipt of your letter of May 5, 2001. Petitions for Rehearing En Banc must be filed in compliance with FRAP 35 and Local Rule 35. Your letter indicates that your Petition for Panel Rehearing did not contain a properly constructed request for Rehearing En Banc. A Petition for Rehearing En Banc that is "unusual or unorthodox in it's (sic) form" obviously does not comply with the rules.

The motion for reconsideration to which you refer was not filed because, at the time of its submission (March 16, 2001), your case was closed and this Court no longer had jurisdiction to act. A letter was sent to you on April 9, 2001, explaining that the Court lacked jurisdiction to consider your motion.

Finally, the United States Supreme Court rules require that Petitions for Writ of Certiorari be tiled within 90 days of judgment. Your case was decided on November 7, 2000. Therefore any Petition for Writ of Certiorari should have been filed no later than February 5, 2001.

This case is now closed. Therefore, as I advised you in my previous letter, the Court no longer has jurisdiction in this matter. I trust that this letter clarifies the status of your case.
Sincerely,

Sd_____
Beth J. Meador
cc: Acco File

This letter, from Ms. Meador, prompted me to write the following letter.

Ashok Kashelkar
6 Innington Court Spring Valley NY 10977

By Certified Mail R. R. R. No.7000 167000130395 0305

May 12, 2001

Ms. Beth J. Meador, Administrative Attorney
Office Of The Clerk U. S. Court Of Appeals-
For the Second Circuit 40 Foley Square
New York NY 10007

Dear Ms Meador ,

Re: Docket No. 00- 7090 Kashelkar v MacCartney, et al

This is to respectfully inform you that, I have serious disagreement with your interpretations, relating to the

applicable FRAP rules, as far as my filing "Petition for Rehearing" and a "Petition for En Banc" hearing, are concerned.

Let us examine the "progress" of this matter, since inception.

I filed the " Appeal" as my right, under FRAP Rule 3.

Upon a "Pro Se litigant's" filing such an appeal, is there any reason, that "it" will not receive "due consideration of the Court", that is "created under and charged to discharge it's duty", in accordance with, the Constitution, Laws and the Decisions of the United States Supreme Court ? My experience shows, that, IN FACT the Court has failed in it's duty, even though I have cited numerous "N. Y. State Statutes and Constitution and U. S. Statutes, N. Y. Court Of Appeals and U. S. Supreme Court Cases [as supporting authorities], in my Brief and Reply Brief

Not only that, but I cited similar State and US "authorities" in the District Court.

Notwithstanding my citing "all of such authorities" the Panel Decision of this Court "Rubber Stamped" the District Court decision.

Can anyone offer me "each and every reasons", as to why "ALL OF THE CITATIONS in MY BRIEFS WERE IGNORED"? What is the "basis for anyone to say, that the Panel decision has been issued with Sound Discretion?" *U. S. v Haggar Apparel Co.* 526 US 380, counsels against " a court charged to reach the correct decision" from reaching an "improper decision" at 390-391. *Haggar* court also observed,

that,..."Even if a language [of a rule and law] is thought to be unnecessary, [that is not a question in my case] however, we do not view it as a tacit instruction for the Courts to disregard substantive regulations" at 390.

Therefore the "Panel Decision" turned my " APPEALS" into "meaningless rituals" *Murray . v. Giarratano* 492 US 1. The "panel decision" does not reflect, that any "meaningful review was conducted", as required by MacNary v Haitian Refugee Center 498 US 479. Supreme Court requires the "decision" to articulate reasons, so the authority that reviews it [U. S. Supreme Court] will have understanding of the "decision lower Courts have reached", as it counsels in *Black v. Romano* 471 US 606.

I received this Court's "Panel Decision" of November 7th 2000 [that is a virtual "Rubber Stamp" except Rico statute of limitation comments], in the mail, on or about the 9th of November, 2000. [It takes 2 days, for the mail to arrive, from NYC].

The panel decision is nothing but a "total shock" and a "total and prejudicial mistreatment" to me as a Pro Se Litigant. However, that is also nothing different than "Customs and Practice" followed by the Court, that is Prohibited by the U. S. Supreme Court, as determined in *Adickes v. Kress & Co.* 398 US 144 [a famous case arising in this Court - that was reversed and remanded]

Along with the panel decision, I also received a "FORM"- RULE 40" information "Petition for Rehearing". Copy is enclosed, for your review.

It does not refer either to "Panel Rehearing" nor even

mentions the words "En Banc" anywhere, within it.

Upon it's receipt, I reviewed "the Form-with information on RULE 40" and I prepared my affidavit on Nov. 10, 2000, requesting "enlargement of time up to Dec. 15, 2000."

The Court granted the "requested extension" by it's decision on Dec. 04, 2000, for which, I am grateful, to the Court.

Upon my return from India, I commenced my work on the "Petition," and "did complete it" on Dec. 13, 2000, then had it " finished, copied, BOUND" and served it by US Mail on my opponents and sent it by US Mail to the Court on December 15th, 2000. Is not "mailing" on the last day, to the Court NOT permitted under the RULE ? If so, please cite the authority and also STATE THAT, IN EVERY CASE PERSONAL FILING HAS BEEN ENFORCED. I will demand verification of the record, from Clerk's office in hundreds of cases.

Now, let us look at the FRAP Rule 35.

Rule 35(c) says..." A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due.

Here are my observations:

1) Since the rule [35(c)] refers to **...initially** .. in this sentence, it also means that, *subsequent filing is not prohibited.*

2) The rule also refers and restricts the time to file....*by the date when the appellee's brief is due.*

> As you are aware, the Court never ordered the "appellees" to file any brief, in the "Rehearing Process".

Consequently, the "time for me to file the First En Banc Petition has STILL not run out".

Therefore, it cannot mean, that, I could have requested, "En Banc hearing" BEFORE the Panel heard my case. [Because, the appellees have filed their brief, only once and that too, in opposition to my Brief, in June, 2000, before the Panel heard the case, on Nov. 01, 2000]

The most important reason, that, I could not have "requested En Banc Hearing" in June is simply the requirement under FRAP 35(b)(1)(A).. That refers to:

> the "panel decision" being in "conflict with "a decision" of the United States Supreme Court" or of this Court. This rule "requires" that, the Panel decision is reached, before any En Banc hearing could be requested.

> It clearly means, that, even when the Panel Decision is in conflict with **A SINGLE DECISION OF THE U. S. Supreme Court,** one can request En Banc Hearing.

In all my briefs, I have cited U. S. Supreme Court cases by the DOZENS, supporting my arguments. **Has anyone seen (& READ) my briefs or not ?**

I could not make a claim [that Panel decision conflicts] in

June of 2000, since the Panel had not even heard or considered my case, by June 2000.

Nowhere, the FRAP either refer to or LIMIT the "panel decision"to mean, a Panel's FIRST decision or a decision, after Rehearing. It just says " Panel decision".

> Nor could I make such a claim under FRAP 35(b)(1)(B).....that requires.....a litigant to state that..... Panel decision conflicts with..... every other U. S. Court Of Appeals. For the same reason-that the Panel had not heard it, by June 2000.

In Short..... To file under the FRAP 35(b)(1)... I must have a panel decision, in my case, in my hand... that qualifies for such a claim [for the purpose of filing].

Under the circumstances, the statements in your letters [that I should have filed my request for En Banc hearing-earlier], are "inaccurate and in fact misleading". Not only that, but I would go a step further ahead and claim that, your "statement and suggestions are deceptive " and are directed towards me as a "Pro Se litigant"; to impose either your will or that of others [who may have directed you to do so] in violation of the Constitutional provisions.

I doubt, you would write such letters to one of the Larger 100 Law firms in New York City. They will have enough clout, to take some actions. Just because, I am a pro se litigant, if you have acted in such a manner then I must seek protection of the same laws and constitution as accepted by *Marbury v Madison,* 1 Cranch 137, 163 [1803] .

Being "a person with some authority" in the Governmental Administration in the U. S. Court Of Appeals, your such statement may cause most Pro Se litigants to "accept them", as *fait accompli.*

However, impositions, not supported by Laws or Rules-when expressed by Governmental Employees "strip the person of the authority" [when an act is performed contrary to the law, even though "so directed by others"] as determined by the U. S. Supreme Court in *Poindexter v Greenhow* 114 US 274.

Now let us look at FRAP Rule 35(b).... A party may petition for a hearing or rehearing en banc. That, therefore means Either En Banc Hearing **Or** En Banc Rehearing.

That means... En Banc.. Hearing is available.. TWICE, in ANY U. S. Court Of Appeals.

We have seen before. that. ANY such "request" for En Banc hearing cannot be made, till the "Panel has heard" a case and issued it's decision. Either it's First decision or the second decision-after "rehearing is requested".

Therefore, it has been proper for me to file a request for En Banc hearing, subsequent to my receiving the Panel Decision of Feb. 09,2001. Therefore your contentions, otherwise, are not tenable, under the RULES.

In fact, my motion of Feb. 17, 2001 contains my affidavit, that clearly "states my intention, to seek En Banc Hearing". I filed "identical" motion in both the cases, pending before the Court [00- 7090 and 00- 7751] . Both the motions have been filed on the same day.

While granting my Motion [as the stated purpose] under 00-7751 , the Court has referred to "Motion of March 09, 2001" in it's April 06, 2001 decision.

There is "NO PROHIBITION" in any FRAP to request extension of time, for Good Cause. Therefore, my "requesting extension of time" to file, "Petition for En Banc Hearing"; as I in fact have done by my motion of Feb.17,2001; that was consistent with and conforming to all the applicable FRAP Rules.

If you think otherwise, please OUTLINE each and every reason, with "AUTHORITY".

This will establish that, every litigant can have UP TO four hearings in ANY U. S. Court of Appeals.. As follows

1) Original Appeal.. Under FRAP Rule 3
2).Panel Rehearing under FRAP Rule 40
3) Initial En Banc Hearing.. Under FRAP Rule 35 and
4) En Banc Rehearing under FRAP Rule 35.

It does not mean, every litigant will even file for "rehearing before the panel".

I would suggest, that. "This mechanism is purposely established, to avoid" too many litigants, from running to the U. S. Supreme Court", where, SO MANY RUN as a result of the "dissatisfaction they receive in Court Of Appeals" and are Frustrated, when they receive rejection, under the Supreme Court Rules.

In fact, the clerk's office, "automatically send information

about U. S. Supreme Court address, etc." with the Summary Order [at least I have received it FOUR TIMES]

In fact, the above reasoning is consistent in view of the Panel Decision of April 06, 2001 in my second case [Docket No. 00- 7751], to the effect that, "Rehearing En Banc is denied". In view of the fact "initial En Banc Hearing" has not been held, any question of "Rehearing En Banc" can not arise.

The same panel "refused to Certify any question to the U. S. Supreme Court or ask for clarification". I do not have any doubts, that each member of the Court is fully familiar, with it's implication and the result - if such step is taken.

Since the Judges of the Court Of Appeals DO CERTAINLY UNDERSTAND THE RULES [as reflected above in 00-7751], **whose bright idea has it been** to come to the conclusion and inform me that my "case is closed" ?

What is the purpose for "notifying me, that the case is closed" ?

It, in effect, illegally "protects" the defendants. Mr. MacCartney has knowingly perpetrated perjury, in the Federal Judicial Proceeding [perfect support for " continuity " requirement in RICO claims], that I have argued and will argue for ever-no matter, what this Court has ruled and in fact "refused" to even comment on ths subject, as the District Court did.

When any person, actively "hides, shelters or protects" another person "charged or is chargeable with a crime", for the purpose of "evading process of justice" the protector is "subjecting himself' to "criminal charge and Penalty" under various statutes in either State or Federal systems. Such

charges may include from "aiding and abating" to "harboring a fugitive". In this case, violation of laws is that of "subornation of perjury".

Since, each person, employed in this Court has taken Oath, that includes, "protection of Constitution and faithful Execution of laws"; are the personnel in this Court not aware of such matters ? Is that not very serious and totally contrary to the laws, **PERSONS** in this Court are **OBLIGATED** to abide by and enforce ? That is forbidden by *Illinois v Gates* 462 US 213, fn14. and *Richardson v US* 526 US 813,818.

C. J. Rehnquist, writing for the Court in Bond v US 529 US 334, at 338 in n2, referring to California v Chiraolo 476 US 207,212 (1986) observed.... ....."[t]he issue is not his state of mind, but the objective effects of his action." In the same case, Justice Breyer, dissenting [Justice Scalia also dissenting] at 341 observed... *"[i]t is the effect, not the purpose, that matters".* [emphasis in original]

Bond, supra has been decided on April17 , 2000. That is well before this Court received my appellate brief. In all my briefs [either in District Court or this Court] I have always requested the Court to "take judicial NOTICE" of the U. S. Supreme Court decisions.

The decision of this Court, under the circumstances and facts on the record, also fails the "objectively reasonable test" of *Smith v Maryland* 442 US 735 [1979] at 740; that is also cited by Justice Breyer, *Bond*, supra at 340.

Do you have any explanation as to why the Court has ignored not just the law but the facts as well, on it's record, in my

BOTH THE case ?

Now- reverting to FRAP Rule 35(c).. and reading the 2nd sentence....

> .....A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing. [that refers to a 14 days period, from the prior [Panel] decision, that is being requested for reviewed En Banc.]

FRAP Rule 40 does not state, that, a litigant is "prevented" from requesting EXTENSION OF TIME, prior to filing a "Petition for En Banc Hearing."

Under the circumstances only known to this Court, the Court "issued" it's denial for PANEL REHEARING on Feb. 09, 2001, in my both the cases, which have been pending before this Court. [i.e. 00- 7090 and 00- 7751].

AGAIN: The "denials" does not state "ANY REASON", at all. Please see comments above in *Haggar*, Supra; *Giarratano*, Supra and *Black*, supra.

That is the reason, I have cited *Elkins v US* 364 US 206 and *Green v US* 356 US 165, so extensively, to question JUDICIAL INTEGRITY, in this Court, in the [00-7751] briefs which were prepared much later and my research surfaced these cases, well after the MacCartney briefs were prepared, served and filed.

Under the above circumstances, this Court's decisions are open to "serious "questions.

Questioning a "Court Decision" is a proper procedure under the Laws and Constitution of the United States. If it is not, may I request that "specific reasons and authority" be cited.

The effect, of the "Court Decision" "protects the defendants, from any liability."

That, in effect is also is "denial of my rights to legitimately claim damages" under the Laws and the U. S. Constitution. *Marbury*, supra, at 163.

It was not possible for me to "Prepare, serve and file" my Petition for En Banc Hearing in two weeks in each of the two cases, before this Court" by Feb. 23, 2001.

I clearly stated my reason, THAT IS A GOOD CAUSE, in my affidavits, dated Feb. 16, 2001, filed in both cases [i.e. 00-7090 and 00-7751], seeking extension of time for filing to March 09, 2001. My affidavit of Feb. 16,2001, with the motion *clearly demonstrates* my intention to seek En Banc Hearing.

I received the Feb. 09, 2001 decision on Feb. 12,2001. On Feb. 16,2001; I prepared my affidavit and on Feb.17, 2001; I served the papers on my opponents and also mailed it to the Court. That means, my "act of serving" the papers "occurred in five days". My request, for extension of time was not going to cause any "calamity", to the U. S. Court Of Appeals", <u>at ANY TIME</u>. My motion conforming to FRAP Rule 27 and FRAP Rule 26 request for "extension for time" to file "Petition for En Banc Hearing" was filed in timely manner. Is that not sufficient ? If not please cite the rule and authority.

My Motion asked, for time till March 09, 2001, for serving and filing the "petition for "En Banc Hearing."

Now I come back to the "process" in the Clerk's office.

The Motion papers, were filed on Feb. 21,2001. [as the "denial of extension request" dated March 09,2001, clearly show]

Here are the questions:

A Since, it was received and filed on Feb. 21,2001, can you please explain to me what transpired, since then to March 09,2001 ?

B Can you please let me know, as to the manner in which:

1) on which date, it was docketed [FRAP Rule 45(b)(1)] and

2) on which date. it was calendared [FRAP Rule 45(b)(2)]

If the Rules under [FRAP Rule 45] do not apply to your office, as far as the "Motions" are concerned, then kindly let me know, "which rule applies, to motions", for ALL the motions, the Court considers.

C Since, I had asked for extension of time "up to and including March 09, 2001" can you please inform me the "exact date", motion appeared

on the Court's Calendar ? Did it appear, more than ones ? On which dates ?

D If it was not decided till March 09, 2001; can you please inform me, as to how long it was, in your office, without being placed on the "Court Calendar"?

E If it did appear on the calendar, before March 09, 2001, what was the exact date, that it "did" appear on the Court's Motion Calendar ?

F Can you please inform me, as to WHY THE DECISION [purportedly reached on the 9th of March 2001], WAS MAILED OUT ON MONDAY, the 12th of MARCH, 2001 ?

While I was preparing my "Petition for En Banc Hearing", I carefully read the FRAP Rule 35(b)(3) and realised, that, in view of the "specific" Page limitations "as far as the length of the "Petition" when a party files a "Petition for Panel Rehearing and En Banc Hearing", they are considered single document. Therefore, my "expression of intentions" in my motion of Feb. 17, 2001; are sufficient, as have been considered to be "so" under 00-7751.

To my plain reading, I had already reached "page limits", while filing the Petition for Rehearing.

Therefore, all that was needed was a Statement, that, the "Panel decision conflicts with "a decision of the United States Supreme Court".

The record shows, that, in the briefs [First Brief, Reply Brief and Rehearing Brief] I have cited numerous U. S. Cases-in support of my case. I have also commented, that, the District Court and this Court's holding is contrary to the U. S. Supreme Court decisions.

Does that not mean that this Court has been placed on NOTICE, that, it's decision [and since it "rubber stamped" District Court decision on Nov. 07, 2000] has been in conflict with several Supreme Court decision ?

Can you please IDENTIFY the Person[s] responsible to write the Nov. 07, 2000 panel decision ?"

Under the circumstances, in my Petition for En Banc hearing [served prior to the Denial of Extension of time, dated March 09, 2001] I offered over 160 US Supreme Court Cases, in "digest format" and did not offer extensive "arguments".

I offered a few comments as to how, two previously decided cases [2nd Circuit] [which formed the basis of the U. S. District Court's decision] were "erroneously decided".

Frankly, I question the **"entire process of appeals"** I have been subjected to, in this Court. It has been "*totally meaningless ritual*". "*Subjected*" to has been extensively discussed in *Davis v Monroe County Board Of Education* 526 US 629 at 644 and 645. That is also frowned upon by the Supreme Court, in it's decision in *Civil Rights Cases* 109 US 3 [1883] at 20-21 and the Supreme Court calls it to be a **violation of the 13th Amendment of the U. S. Constitution.**

So far the cost to me is in several thousands of Hours of work and at least over $ 1,500.00 in preparing the Appendix and Briefs, in this appellate process. I have expended thousands of dollars and spent thousands of hours in prior proceedings. This will constitute "deprivation of my property", without equal protection under due process, guaranteed by the Fifth Amendment; recognised by *Boiling v Sharpe* 347 US 497 and denial of equal justice, under *Hirabayashi* v US 320 US 81.

I am calling " the appeals process, *I have been subjected* to in the 2nd Circuit" to be "extremely prejudicial to me, full of disregard of the U. S. Constitution and the Laws of the U. S. Congress and hundreds of decisions of the U. S. Supreme Court. The Supreme Court in *Texas & Pacific R. Co. v Rigsby* 241 US 33, at 39-40 [1916] in unanimous decision admonished that, **"disregard of law is wrongful act"**.

In addition to which, you "write letters informing me, that, for any more filing, the Court may impose monetary sanctions upon me. This not only a "purposeless restraint" per *Baker v McCollan* 443 US 137 [1973], at 146 [Blackmun J. concurring]. It also cited *Poe v Ullman* 367 US 497 [1961] at 543 comments of dissenting Harlan J. relating to "liberty".

I call this act [of threats of imposition of monetary penalty as Governmental Administration by "intimidation and threats".

Such conduct or act [that is performed by individuals and not by the Brick or mortar of the Court Building] is prohibited by the Constitution and numerous Federal Statutes. Justice Black described such matters as "being punished for pursuing a constitutionally protected conduct"- *North Carolina v*

Pearce. 395 US 711. It is also proper to describe the "act of closing the file, without any legal authority, equal to [p]ervasive and objectively offensive behavior by an official denying constitutionally guaranteed benefit, cf *Davis ,supra at* 653.

In fact "[i]t is the official decision, not to remedy the violation [of a wrongly reached Panel Decision]" and to top it all for me to receive, such threats in your letter.....*Davis* supra, at 642, that is most disturbing.

That is the reason, I have offered the example of a "Police officer, stopping a car at night, proceeding to break a light and then issue a summons, for not having a proper light", in my first letter to the Clerk's office. It is also akin to "employing a Fox to guard a chicken coup".

Can you please categorically explain to me, why is it wrong for me to File

1) Appeals

2) Motions under the FRAP Rules ?

3) Petition..... for relief as provided for in the FRAP Rules ?

4) And for relief under the authority in 28 USCS 2106 ?

I am requesting you to be specific, in your response.

Finally: 1) Who took the decision that my MacCartney case [Docket No. 00- 7090] **was** [or to be] **closed** ? Please identify, each and every person, responsible, for the decision. Please identify the person[s] by name(s) .

2) Is it an "administrative" decision or a "Judicial" decision.

3) Who "interprets" the FRAP in this Court ?

4) Has the Court "reached interpretations of FRAP" in any manner, other than, as promulgated and published ?

5) How did the "decision maker" convey this decision to you or to anyone else in the Clerk's office, to close the file ? Has it been "verbal" or is that "written" ?

6) Did anyone even make an attempt to "challenge or question the decision", that every person performing a "law enforcement function" must question, at any time, before you wrote the letter to me, that is dated April 06, 2001 ?"

Based upon the contents of this entire letter and my previous letters to you, I am requesting you to "categorically explain every matter, wherein I have requested a response."

By this time, my claiming that, I have been discriminated is

not at all wrong. It would not surprised me, if several other litigants have been treated and that such *"customs and practice"* has prevailed, in this U. S. Court, that is frowned upon by *Addickes*, supra.

This is proof positive of "deliberate indifference and discrimination" in the U. S. Court.

Your letter is the "factual evidence" of conduct that is totally prohibited by the Constitution and the decision of the Supreme Court of the United States.

The Courts have duty to see, that waters of Justice are not polluted-as the Supreme Court observed in *Mesarosh v U. S.* 352 US 1, 14 [1956]. Ignoring the Congressionally mandated procedures cause the Courts to become accomplices in the disobedience of the law- *McNabb v US* 318 US 332. That is how it looks, with the decisions, I have had, so far.

Whether you agree or not, that is the fact. The facts are spoken by the written words of the Court decisions, now "etched in black ink on the paper" and your letters, to me.

The Courts decisions can be changed and rectified, provided there is will to do so. Authority is provided in **28 USCS 2106**, to rectify . This statute, authorizes me to file a "motion to Reconsider, Modify or vacate" Panel Decision and that is exactly, what I have done. My act is constitutional and protected by the Constitution and I should not be nor can be subjected to any penalty, see *North Carolina v Pearce*, supra, without violating my constitutional rights.

FRAP Rule 41 (d) 1 permits filing a motion to stay a mandate.

I have filed such a motion, by serving and mailing on March 16, 2001 and now, you have indicated that, the "motion is not filed".

Can you please inform me as to who took that decision "NOT TO FILE" the March 16, 2001 motion ? I would like to know each and every aspect of applicable FRAP or any other rule that your office may have relied upon to reach such a decision.

That is the sole reason, I have suggested that, I am looking for "rectification" and do not expect "retribution." Retribution is not justice. I trust "sound minds" will, prevail.

I have used civil language, to express myself and no one should be offended.

Let the Court set the record on proper path and then and only then, justice will prevail.

Sincerely,

Sd_____

Ashok Kashelkar

A Pro Se Litigant

PS: If the Court determines that, it will first decide the 00-7751 and pending that decision will hold the 00- 7090

in "abeyance", that I can understand.

As a result of my May 12, 2001 letter, herein, I received DENIAL of Request for En Banc Hearing dated May 16, 2001 [please see Appendix B..pages 52 & 53; in Rubin & Rothman matter. Then I received denial of my March 16 Motion "re" my Petition for En Banc hearing and the "denial" is dated May 31, 2001, in the MacCartney matter [Appendix B pages 18, 19 20.

This decision bears a "FILED" stamp, dated March 19, 2001 and shows, that Ms. Meador falsely informed me that, "the March motion was NOT FILED."

I would also suggest, that in fact, my May 16, 2001 Motion was "not EVEN submitted to the Court" prior to my writing the letters, to Ms. Meador.

Prepared and submitted by

Ashok Kashelkar
Pro se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel (845) 426 2902

(6)

Supreme Court, U.S.
FILED

01 274 AUG 13 2001

OFFICE OF THE CLERK

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner
-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner
-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix D - Conforming to Rule 14.1(i)(vi)

Petitioner - Ashok Kashelkar - Pro Se
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55 pp

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List of the Counsels for the Respondents

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Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "material" if part of the Appellate Brief filed in The Court Of Appeals, for the Second Circuit, that offers a "distilled" view of the complaint including the exhibits.

This Appendix D offers material conforming to Rule 14.1(i)(vi)

This material "exclusively" refers to case No. 1; i.e. Ashok Kashelkar v Harold Y. MacCartney, Jr. et al

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 24, 2001

Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. (845) 426 2902

Authorities Cited in District Court and Court Of Appeals Proceedings

Nomenclature of the abbreviations used hereunder.

DCLM, DCAF, & DCRR -
Law memos to U. S. District Court
B- Brief to U. S. Court Of Appeals
RB- Reply Brief " "
RARG- Petition for Reargument - Brief to " "

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REARG-

By Ashok Kashelkar
Plaintiff-Appellant

Petitioner, herein

Portion Of The Petitioner's Appellate Brief is reproduced

The jurisdictional statement

I filed this action pursuant to United States Statutes, in the U.S. District Court, on July 14, 1999, Southern District of New York; against all the defendants named in the action, for Fraud, Extortion and Obstruction of Justice under Title 42 for Civil Rights Violations and Title 18 for RICO violations by all the defendants,

The defendants moved under **FRCP Rule 12** and **Rule 56** and after an initial conference, on Nov. 05, 1999 and my submitting the responses, in opposition; pursuant to the "guidelines of the Court"; the district court dismissed all of my claims; by an order dated December 22, 1999. The clerk of the District Court of entered a judgment on December 27, 1999.

Pursuant to **Rule No. 4** of Federal Rules of Appellate procedure, I filed a notice of appeal in the District Court January 19, 2000 and paid the required fee of $105.

This appeal is taken from each and every part of the final order and judgment entered in the District Court in this matter.

Statement of issues presented for review

1) I have presented my claims, pursuant to the applicable Statutes and Rules and request reversal of the District Court Judgement, reinstate my claims, for conclusion

by a Trial before impartial Jury, with complete protection of Law Of The Land.

2) Do the attorneys engaged in Law Practice ***have immunity***, protection or waiver under the laws and constitution of the United States.

A. That permits them to perpetrate misconduct during the course of judicial proceedings in this jurisdiction.

B. That permits the attorneys to escape from "application of laws" to their misconduct; wherein they do not have to answer to anyone, in Civil Litigation.

C. Permits such [in A & B above] attorneys to inflict damages to the rights of other individuals with impunity and not have to stand trial in a Civil Action; before an impartial jury, in a Federal court.

D. Is it proper for the Courts to "impliedly or implicitly" offer protection-to attorneys, that is explicitly not provided by Constitution or the laws ?

3) Is it proper for a Federal Judge to "instruct" to *change* transcript of *any proceedings in Courts*; without notice, consent or acquiescence of "a" participating litigant appearing before the Judge; then not even notify "the" litigant, that *"transcript has been changed"* and violate litigant's constitutional rights for Due Process and Equal Protection Of Laws, guaranteed through the Fifth Amendment of the U. S. Constitution.

4) Is it proper for a Judge, either in the State Courts or

in the Federal Court to ignore the mandates of the Congress and the U. S. Supreme Court and *railroad* a litigant ?

Statement of the case.

This case arises out of the defendants knowingly perpetrating multiple frauds, extorting my rights and property, during a N. Y. State judicial proceedings I filed in Rockland County against a motorist and their insurance company, in March 1995.. OMCDOC ands counsels made false statements, in their verified answer. That "falsification" referred to the "central issue of the insurance company conduct [GEICO] violating Laws and Rules, while it improperly processed my claim.

During the ensuing motion practice, the defendants commenced; and in response to which, I procured admissible proof [in spite BM's misconduct] from NYS Insurance Department; in support of my claims. All the defendants engaged in conspiratorial acts, used U. S. Mail and Private Mail Carriers; interfered with my Constitutionally protected rights, defrauded me of equal protection of laws, guaranteed by the New York State constitution, abused the State judicial process, all with the help of Law Clerk of Supreme Court Justice-in Rockland County, NY; who usurped authority and abused power in total contradiction of the State and U. S. Constitution and Laws; to deprive me of my rights as well as my property.

The defendants deprived me of "potential recovery", I would have made from the defendant GEICO, besides the recovery of all other damages, including those to my vehicle. The defendants obtained "judgements by Fraud" for their clients [who are not party to this action]. In the State Appellate

process, all my pleas to reverse those judgements, were ignored.

I have not asked, for "reversal" of the State Judgements, in this Federal action.

I filed this action, against the individuals and entities, named in the Summons and Complaint, responsible to cause damages to my rights and property, pursuant to **42 USCS 1981**; **42 USCS 1983; 42 USCS 1985** as well as under **18 USCS 1961**, *et seq;* upon my finding and understanding the "mechanism of their fraud", in order to state my claims under the Federal Rules Of Civil Procedures.

My complaint contains, Statement Of Facts [chronological statement of events describing over 20 major and some minor transactions]; Conspiracy to Defraud- that alleges actions of the defendants engaging in conspiracies; Principles and Basis of Civil Rights-outlining the-Statutory and Decisional base of my claims; Criminal Conduct of CD-outlining the criminality in the defendant's multiple transactions and RICO; outlining the elements required constituting RICO claims-including clear allegations of each defendants violations. In addition to which, a "Formal Complaint" of 16 counts, against all the defendants, brings together the "essential elements of all of the above sections" with demands for relief. I have also attached part of the "State Proceeding" as Exhibits, with the complaint, that was filed and served, on all defendants.

Summons and complaints were filed and served on the defendants, pursuant to the FRCP Rules; the defendants, appearing through their counsel [Except that HYM and MMKM appeared Pro-Se] moved to dismiss the action pursuant to **FRCP Rule 12** and **FRCP Rule 56** to which I submitted my opposition's but the District Court in granted

the motions of all the defendants and by case has been dismissed.

District Court stayed all discoveries and non was conducted

Statement of Facts

In view of multiple transactions, forming the basis of this action, each one of them has been reported separately and some are analyzed [including statutory reference] in detail for the violations of statutory provisions, showing relationship in presentation.

Transaction No. 1: OMCDOC counsel Daniel Miller, prepared, verified (pursuant to **NYS CPLR** section 3020), served the answer by " U. S. Mail" [AK Exhibit No. P-01], in behalf of GEICO (a def. in State action), containing false statements. That is *alleged* in detail, in SOFACT Para 31, 32,33, 34, 35, 36, 37, 95; supported by AK Exhibit No. P-01 and P-01-X and HYM Exhibit "H". The answer verified, under penalty of perjury by OMCDOC, served upon this plaintiff as well as upon MMKM by U. S. Mail (SOFACT PARA 29), is materially false. The very act of OMCDOC "perjury" is *further alleged* in Civil Rights [Federal suit] section Para 22.d to 22.m) on page 5 and 6; *and further alleged as* detailed in "Criminal Conduct" of [Federal Suit] in Para 1\page 1 to para 5 \ page 2. OMCDOC's penal violations are *alleged* in "Criminal Conduct" section of [Federal Action] under Statutory Penal Violations in Para 17.a \ page 6 to para 17.c \ page 6. The penal violations are "collectively" *amplified* further in this section. The effects of OMCDOC perjury are further *alleged* in "Criminal Conduct" para 17.d \ page 6 to para 17.l \ page 8 OMCDOC answer is materially false, because, AK in his "State action complaint" [Exhibit P-00], in paras 30 to 47 *alleged*, that GEICO failed

to train, supervise, manage, educate it's employees leading to GEICO's failure to settle AK's property damage claim according to the NYS Insurance Law and that GEICO were *cited and "fined"* by the insurance department. These *allegations* are supported by the Public Record of NYS Insurance Department shown in [Exhibits P-01A, P-17 and P-17A].

Not only that, but counsel Miller also violated his "oath of office" and failed to conform to the conduct mandated by **22 NYCRR 1200** et seq. In fact, counsel has shown *"reckless disregard"* in "falsely swearing" such an answer after "failing to conduct" necessary inquiry, with their own client [GEICO] to verify, if the "allegations in AK's State Action complaint [Paras 30 to 47 of AK Exhibit P-00], were valid or not". Simple inquiries of that nature would have and should have shown to counsel Miller, that, AK's *allegations* were then accurate and *are accurate, even now*.

AK has *extensively commented about* GEICO employee failures, in his own affidavit of July 14, 1995; that is HYM Exhibit "M", herein and is also supported by AK Exhibits attached to his affidavit, in this action, under No. P-40.

Counsel Miller's "false statement" under oath, **is perjury** under the **NYS Penal Laws** sections 210.05, 210.10, 210.15, 210.20, 210.25, 210.30, 210.35, 210.40. Out of them 210.05, 210.35, 210.45, are **"A" Class Misdemeanors**; 210.10 & 210.40 are **Class "E" Felonies**..each earning 4 years of incarceration upon conviction; 210.15 is **Class "D" felony**, that earns 7 years, upon conviction. All of which are imputed to OMCDOC.

AK did raise issue of "perjury by OMCDOC counsel" in his affidavit of July 14,1995 [HYM Exhibit "M"] and discussed

it in, every detail. AK expected the Rockland Court to "act properly upon finding the *issue raised* but failed to do so. AK contended, through the State Court Appellate process, that Rockland Court *tolerated* OMCDOC perjury, *as exhibited* in one of the four " RADI-forms, I completed and filed in the Appellate process;. please see P-31, HYM Exhibit "II"] . The issues have been argued in AK's appellate brief [see HYM Exhibit "SS"] and was later raised in the Jurisdictional Statement to NYS Court Of Appeals [HYM Exhibit "WW"] and then in letter to NYS Court Of Appeals [HYM Exhibit "YY"].

Transaction No. 2: OMCDOC [backdated]letter, dated June 02, 1995, under signature of William R. Watson; mailed by "U. S. Mail" on June 14, 1995 (*alleged in*, Sofact para 59); in violation of **18 USCS 1341**.. The "false statement, in written instrument" is violation of NYS Penal code 210.45, that is an "A" misdemeanor. This is under signature of William R. Watson, ESQ.

Transaction No. 3: OMCDOC Motion (AK Exhibit P-05 and P-06) to strike AK's bill of particulars (AK Exhibits P-04A) , dated June 29, 1995; served on AK through U. S. Mail (*alleged* in Sofact para 66, 95) and also served upon MMKM; includes "GEICO's answer, falsely verified by OMCDOC [Transaction No. 1 above]"; was also "filed" in Rockland County Court, by U. S. Mail. It was also served through U. S. Mail upon MMKM. That "motion" is HYM Exhibit "J". DD filed it, with the "Notice Of Motion" AK Exhibit P-05 and P-06.

Deborah Dillon [DD], prepared her affirmation [HYM Ex. "J"], and DD served and filed the motion, in Rockland Court, containing "falsely verified answer by counsel Miller of OMCDOC," *as alleged* in "Criminal Conduct" section in

Para 8\ page 3 to Para 11 \ page 4.The *effects* of OMCDOC perjury are further *alleged* in "Criminal Conduct" para 17.d \ page 6 to para 17.l \ page 8. Para 7 \ Page 3 to Para 10 \ Page 4, discuss the *allegations* of "subornation of perjury by DD, Watson and OMCDOC".

Transaction No. 4: AK called Bruce Muldoon, on July 05, 1995 and July 06, 1995; (*allegations* in Sofact paras 73 to 76) for obtaining "so ordered" subpoena, from J. Meehan and in the telephone conversation, Bruce Muldoon denied access for AK to reach J. Meehan.

I have alleged, in "Conspiracy To Defraud" section [Of Federal suit] beginning Para 1 \ Page 1 to Para 2 f-7 \ Page 3, that; BM conferred with "other defendants" . These acts of "consulting, conferring" were in fact "conspiratorial in nature". The act of "consulting and conferring" was the part of the "scheme to defraud" AK of his rights and property. There was "no reason nor any "rationale", for BM; to refuse access, for me to J. Meehan.

I have also *alleged*, in **"Civil Rights"** section para 22 n to Para 23 \ page 7; para 24 \ page 8 to para 48 \ page 18; relating to BM's actions, violating AK's Civil Rights. BM being an employee of NYS, committed the violations as a State actor, as alleged in para 49 \ page 18 to para 65 \ page 22, without any authority, to do so. Thereby, BM "assumed the risk"

In this manner, BM personally *"impaired"* AK from accessing J. Meehan, the N. Y. State Constitutional authority, for a "judicial matter" and prevented AK from "accessing a state created benefit", under the State Law. BM's *"imposing" pre-conditions* and directing AK to engage in motion practice, contrary to Practice of New York

Metropolitan Area NY Courts in application of CPLR; were *"impediment or impairment"* to AK's in violation of **42 USCS 1981[c]** Protection against impairment.. Under color of state law. BM's actions, were direct violations of **42 USCS 1981(a)**.... that entitles AK to receive..."the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens".... BM denied "that" benefit of "laws and proceedings" to AK.

The **N. Y. S. Constitution, Article 1, section 11** guarantees.. "equal protection of laws and prohibits discrimination in Civil Rights.."... That itself required BM, to comply with the N. Y. S. Constitution and the legislated CPLR. BM, directly violated **42 USCS 1983**, by "depriving rights, privileges and immunities secured by the constitution and laws"; guaranteed under 14th amendment of U. S. Constitution, for AK to approach J. Meehan.

BM's making personal choice to deny "equal rights" to AK; guaranteed by the NYS Constitution [cited above] was violation of **42 USCS 1983**, while he abused his authority and usurped power, he did not possess.

Hence, BM's above described actions violated **42 USCS 1985(2),** wherein BM, *personally*... "impeded, hindered, obstructed and defeated the due course of justice in the State Of New York"..... to AK. BM *set in motion,* the "absolute discriminatory conduct, leading to the "ultimate" determination dismissing [P-22 and P-33] ", AK's Rockland Action.

BM's above described acts, violated **42 USCS 1985(3)** wherein he "denied equal protection and privileges under the laws as described heretofore.

In this transaction, BM violated **18 USCS 1512(b)(2)(C)..** evade legal process summoning a witness, or to produce record, documents or other object, in an official proceeding, as result of his personally denying access for AK to approach Meehan, for a "so ordered" subpoena; *as alleged* and thereby violated **18 USCS 1961(1)(B)**, causing further violation of **18 USCS 1962(b)** and **18 USCS 1962[c]** triggering violation of **18 USCS 1962(d),** triggering **18 USCS 1964[c],** for claims of Civil damages.

These violations triggered USDC jurisdiction pursuant to **18 USCS 1965**

This will demonstrate, that, by perpetrating "ONE ACT"; BM violated several State and Federal, Civil and Penal Statutes along with provisions of State and U. S. Constitution.

Transaction No. 5: AK's cross Motion against GEICO, was sent to OMCDOC and MMKM, through U.S. Mail (*allegations* Sofact paras 78 to 101) and AK Exhibit P-09. The primary proof [AK Exhibit P-01A] demonstrated that, AK's 2nd and 3rd causes of action against GEICO were accurate and true. Since, Bruce Muldoon prevented AK from obtaining a "so ordered" subpoena [described in transaction No. 4 above] AK was left without any choice and could not produce the "admissible proof" in the form of AK Exhibit P-17 and P-17A; prior to July 14, 1995. The "*impairment* of an "*unfair state judicial proceeding*" had commenced. The very act, of AK in opposing the "fraud by OMCDOC counsels" [then so known] was the basis AK's cross Motion, that is HYM Exhibit "M". Since AK sent the "Cross Motion" by U. S. Mail, exposing the defendant's fraud and that OMCDOC as well as MMKM received it, *receipt of the cross motion* [

re their fraud] caused them to violate **18 USCS 1341 under 18 USCS 1961(1)(B).** This act "triggered" my claims for Civil damages under RICO, fort reasons cited in transaction No. 4.

Transaction No. 6: AK received MMKM letter and motion, through Airborne express (*allegations* in Sofact Para 108 to 136) AK Exhibits P-13 . The letter (AK Exhibit P-13 & HYM Exhibit "R") *unilaterally sought* "return date adjournment" of Geico motion, from July 21, 1995 to August 18, 1995. The Levine Cross motion for **CPLR 3212,** summary judgement was filed in violation of **CPLR 2215** (described in full details in Sofact paras 108-136).

This was the "first major act by HYM and MMKM", commencing to defraud AK [and also save OMCDOC from any embarrassment with GEICO { for losing a Summary Judgement motion to a pro-se litigant }], that developed into a "scheme" in itself, to help OMCDOC and GEICO; their "mutual principal". HYM's success in "*unilateral* adjournment of GEICO motion" and **CPLR 3212** motion, untimely filed under **CPLR 2215** and then "adjourned" in violation of 22 NYCRR 208, *et seq*; caused HYM to commit the following penal violations.

AK has alleged, in the Sofact Paras 123 to 139; that AK never "knew of the [HYM's] intended adjournment "scheme", never consented to any adjournment nor received any communication from Meehan J. or BM of any nature, either inquiring or notifying, about the [HYM proposed] adjournment" and therefore was defrauded, in the "judicial process". [In fact HYM *has admitted most of the allegations, affirmatively,* through his answer, filed in the Federal Action-that is analyzed in detail-in my Affidavits of Dec. 06, 1999 and Dec. 17, 1999; opposing the defendant's

Motions.]

AK has also *alleged*, in the Federal Suit, in the section "Conspiracy to Defraud" that BM consulted with HYM and MMKM beginning in Para 1 \ page 1 to Para 2 f-7 \ page 3, relating to the "Transaction No. 4" and then from Para 3 \ Page 3 to para 6 \ page 12. AK has further *alleged*, in the section **"Civil Rights"** from Para 22 n \ Page 7 to para 48 \ Page 18; referring to the actions of HYM and MMKM. In the same manner, *allegations* in the section "Criminal Conduct" beginning para 6 \ 3 to para 17 e \ page 7 to Para 17 n \ page 8 are applicable to HYM and MMKM.

HYM, through his letter [P-13] corruptly persuaded BM to adjourn the " GEICO Motion's return date", without AK's consent [that HYM has admitted in his answer, in this action]. How could HYM, unilaterally "write the letter to te Court, unless he acquired knowledge, that, neither DD nor Watson were in OMCDOC office, in the week of July 17, 1995. HYM has absolutely perfect knowledge, that OMCDOC, could not respond to AK's Cross Motion, before the Return date of July 21, 1995; notwithstanding to all his claims, to the contrary, in his Summary Judgement affidavit.

In fact, had the "GEICO motion not been adjourned" from July 21, 1995 to August 18, 1995; then, AK was entitled to "receive Partial Summary Judgement, in his favor, under **CPLR 3212**"; upon "submission" of the Motion, on the return date of July 21, 1995.

Even if it is argued, that, the "admissible documents" (P-17 and P-17A) were not submitted, with July 14, 1995 affidavit { HYM Exhibit "M" }[because BM prevented AK from obtaining a subpoena { Transaction No. 4 }] and was denied Trial of Issues raised on Motion { in Transaction No. 5 }; on

July 21, 1995 and "because the admissible proof was submitted later"; even then, under "consolidation of all Motions [Please see Court Order P-22], P-17 and P-17A; "the admissible proof were required" to be accorded the judicially mandated weight and consideration, in determination of the Motions and that AK should have received Partial Summary Judgement, against GEICO"

The *denial of "partial Summary Judgement to AK, on Liability", was the ultimate Fraud against AK, by all the Federal defendants.* That is where AK lost his "potential and substantial recovery from GEICO" [State Defendant] and that is where, all the defendants "perpetrated the Civil Rights" violations, against AK.

The principal object of the [P- 13] letter, was to "adjourn" the return date from July 21, 1995 to August 18, 1995; to "assist OMCDOC and create an opportunity for OMCDOC to respond, to AK's cross Motion, to avoid the financial and legal disaster to GEICO". That adjournment adversely affected "AK" and it *affected the final outcome* of AK's State action.

HYM committed Statutory violation of **42 USCS 1981(c),** *by impairing AK,* from proceeding in the State action, according to the NYS Constitution, the **NYS CPLR** and **22 NYCRR 1200** *et seq.*

In this "single" act, of *adjourning motion* without AK's consent, by conspiring with BM, consulting with OMCDOC, by using a letter, sent through Airborne Express to the Court, AM and OMCDOC; HYM and MMKM violated **42 USCS 1981(a); 42 USCS 1981(c); 42 USCS 1983; 42 USCS 1985(2); 42 USCS 1985(3).**. As detailed in transaction No. 4, above.

In fact, the same acts violated **18 USCS 1512(b) ; 18 USCS 1512(b)(2)(A) and 18 USCS 1512(b)(2)(C)**. under **18 USCS 1961(1)(B)**

By *drafting, sending and filing the letter* [P-13], that contains "false statement" creating impression, that AK had consented to an adjournment and "by mailing it", as a part of the scheme, HYM violated **NYS Penal Code** 210.45 [Class "A" Misdemeanor] and violated **18 USCS 1961(1)(A)** [*Extortion, chargeable under state laws*]. For mailing it by Airborne Express, to AK, to The Rockland Court and OMCDOC, HYM earned *THREE violation* under **18 USCS 1341** and **18 USCS 1961(1)(B).**

The wheels to "dismiss AK's State action were *set in motion*, by all defendants; upon HYM's receiving AK's cross Motion [HYM Exhibit "M", herein].

I have alleged, that *BM was the "pivotal and instrumental party"* in this transaction, and received the [P-13] letter from HYM, by Airborne Express and hence, has violated all the above State as well as federal penal codes. This is where the NYS **CPLR** and **22 NYCRR 208**, required BM to act lawfully and reject HYM's letter, for adjournment. BM violated 18 USCS 1961(1)(A)
[*Extortion, chargeable under state laws*]. For receiving [P-13] by Airborne Express, BM earned a violation under **18 USCS 1341** and **18 USCS 1961(1)(B)**.

Transaction No. 7: OMCDOC sent a letter dated July 24, 1995, to the Rockland Court (*allegations* in Sofact paras 141 to 147) and AK Exhibits P-15 and P-16; further confirming "their request, to adjourn the return date from July 21, 1995 to August 18, 1995.In addition AK, in the Federal Suit, has *alleged*, in **"Conspiracy To Defraud"**

section para 7 \ page 12 to page 13, the actions of DD and OMCDOC in concert with other defendants. The conspiratorial conduct is also *alleged*, in **"Civil Rights"** section, from para 22 n \ Page 7 to para 48 \ page 18. In this manner DD, OMCDOC and Watson became "state actors" as alleged in para 66 \ page 22 to para 69 \ page 23.

This letter [P-15] was, "supplemental to HYM letter [P-13], affirming a "late request for adjournment". The fact, that OMCDOC and DD sent this letter to Meehan J. (but intended for BM) shows that, "the scheme to defraud AK had taken a solid footing" amongst all the defendants herein.

The very fact, that, [P-16] **has a handwritten remark**, *inquiring* whether AK (denoted by a Greek alphabet II - meaning plaintiff) agrees to the adjournment. I have already *suggested, that, Meehan J. wrote it, for BM, to follow and respond*. BM must testify and clarify, for this proceedings, who was responsible to write "that remark" and what "resulted" of that inquiry; between Meehan J. and BM. Therefore the DD letter [P-15, and P-16 ..with remarks] has become an "un-controverted" proof of the "defendant's scheme to defraud AK of his rights and property". BM *never acted*, on the "handwritten remark"[I would suggest that to be of J. Meehan], solely because, that would have "destroyed the arrangements". In this manner, BM got further involved in RICO and Civil Rights violations, in this transaction, as well. DD, OMCDOC violated **18 USCS 1961(1)(A)** [*Extortion, chargeable under state laws*]. For mailing [P-15] by U. S. Mail and earned a violation under **18 USCS 1341** [one for each def.] and **18 USCS 1961(1)(B)**.

Transaction No. 8: AK served his cross motion against Levines and mailed the same to MMKM and OMCDOC (*allegations* in Sofact Para 154 to 171) HYM Exhibit "T",

with AK Exhibits P-17 and P-17 A. The Exhibits P-17 and P-17-A are the material exhibits, which supported AK's causes of action against GEICO. They were attached, as soon as they were received from NYS Insurance Dept. They were also relevant, since AK was "opposing" HYM's Motion under CPLR 1003; relating to "severance" of the two action claiming "prejudice" to Levines but HYM never produced and "attached" any "affidavit" from Levines to support the claim.

Conduct of GEICO the insurance company (State action defendant) was under question. GEICO were the "real principals" of MMKM and HYM. HYM elected to "plead for GEICO", through his own affirmation [see HYM Ex "P page 5..bottom] asking to "deny" AK's cross Motion [HYM Exhibit "M"] against GEICO.

In the Sofact paras 113, 114, 115, 116, 117, 118, 120, 121, 123, 127, 129, I have *alleged*, that, MMKM and OMCDOC have *interchangeably* "argued" for the parties, each of them did not "directly represent", in Rockland action. In essence, they were protecting GEICO's financial interest, of the "potential loss" under 2nd and 3rd causes of AK's State action. There is "no question" that, AK's proof [P-17 and P-17 A] has remained and will always remain as un-controverted as a **"writing carved in hard black rock".**

After these transactions, " the scheme takes a different shape"

Transaction No. 9: OMCDOC filed their "Cross Motion" AK Exhibit 18 (*allegations* in Sofact para 172 to 190) that contains Geico's false answer (AK Exhibit No. P-01 and P-01-X) and then again served it upon this plaintiff (*allegations* in Sofact para 172) as a part of the motion

practice (Please see HYM Exhibit "V") on August 15, 1995 (See SOFACT Para 171-190) and the same was mailed to the Court, to MMKM by U. S. Mail. **RICO** violations.

DD and OMCDOC, "moved to dismiss" AK's State action, " for failure to state cause of action" that is [identical to the **FRCP Rule 12(b)6** motion]; through their Cross Motion of August 15, 1995; made returnable on August 18, 1995; the date, that was Extorted from AK. *This motion was filed in complete violation of* ***CPLR 3211*** [answers were served filed and *my "admissible" proof* for partial Summary Judgement was already on the Court record.]

AK in the Federal Suit, has *alleged*, in **"Conspiracy To Defraud"** section para 7 \ page 12 to para 9 page 14, the actions of DD and OMCDOC in concert with other defendants. The conspiratorial conduct is also *alleged*, in **"Civil Rights"** section, from para 22 n \ Page 7 to para 48 \ page 18. In this manner DD, OMCDOC and Watson became "state actors" as alleged in para 66 \ page 22 to para 69 \ page 23. This action also causes violations of **Civil Rights** and **RICO** statutes. DD & OMCDOC violated **18 USCS 1961(1)(A)** [*Extortion, chargeable under state laws*]. For mailing [P-15] by U. S. Mail and earned a violation under **18 USCS 134**1 [one for each def.] and **18 USCS 1961(1)(B).**

Transaction No. 10: OMCDOC served their "reply affirmation" dated August 18, 1995 [AK Exhibit P-18 A]; *allegations* in Sofact para 191 & 192. This was mailed to AK, MMKM and the Court. This reply affirmation, [HYM Exhibit "W"]was in further support of their own motion, [Transaction No. 3 herein]. In para 7, DD has denied, under Oath, that none of the counsel with OMCDOC violated their Oath, etc. DD, OMCDOC were perpetrating similar penal violations, as those in the transactions above and need not be

repeated, here. That is part of the same "scheme" and the "papers are served and filed to "solidify" their 'fraud' and use of U. S. Mail is made, to accomplish it, causing RICO and Civil Rights statute violations.

Transaction No. 11 OMCDOC served, mailed and filed their "affirmation in opposition" dated August 17, 1995 [HYM Exhibit "X"]; *allegations* in Sofact Para 194 to 197 and is AK Exhibit P-18 A and P-19. The objective of this was to "oppose" AK's Cross Motion for Summary Judgement [Transaction No. 5 herein]. This was a continuation of the U. S. Civil Rights Statutes violations, **42 USCS 1981(a); 42 USCS 1981(c); 42 USCS 1983; 42 USCS 1985(2); 42 USCS 1985(3)**.. as detailed above and are incorporated herein, by reference. DD & OMCDOC each violated **18 USCS 1961(1)(A)** [*Extortion, chargeable under state laws*]. For mailing [P-15] by U. S. Mail and earned a violation under **18 USCS 1341** [one for each defendant.] and **18 USCS 1961(1)(B).**

Transaction No. 12 AK served his "reply" oppositions to OMCDOC Cross motion and other oppositions [Transaction 10, 11 & 12 herein] *allegations* in Sofact paras 198 to 206. AK's affidavits in opposition are HYM Exhibits "Y" & "Z", in the Federal action.

Transaction No. 13. DD & OMCDOC then proceeded to write a letter, to Meehan J.; dated Sept. 05, 1995 [AK Exhibit P-20]. This letter is particularly directed at AK's litigation as a "Pro-Se" litigant, asking Meehan J. to "curtail AK's activity, in the Judicial Proceeding". This is direct and un-controverted proof, that, the GEICO counsels asked Meehan J. to deny the 1st amendment right, to present his grievances to Meehan J. under U. S. Constitution.

AK has *alleged* in Sofact para 208 *"re this letter"*. AK has also alleged in "Conspiracy To Defraud" section Para 12-13 \ page 16 and in the "Civil Rights" section, under Discrimination \ Pages 7-11 and Depravation \ Pages 11 to 13; referring to the "acts" reflected in the letter.

It is most interesting, that, DD complains of "not receiving notification of adjournment of the Motions to Sept. 01, 1995". Of course, she has not mentioned, that, there was no notification of the "first adjournment from July 21, 1995 to August 18, 1995- behind AK's back".

DD pleaded for "injunction" against AK's litigating the State Action. AK responded, to the DD letter by his own letter to the Court [AK Exhibit P-21].

DD perfectly understood the implication of the AK Exhibits P-17 and P-17-A and continued to Push for "dismissal" by one or the other means. DD found a "sympathetic BM", to "sway" the Court decision, for dismissal.

DD's writing the letter { P-20 } was direct violations of These acts are violations of **42 USCS 1981(a); 42 USCS 1981(c); 42 USCS 1983; 42 USCS 1985(2); 42 USCS 1985(3)**.. As described in the transaction No. 4, detailed above. As well as violations of **18 USCS 1341, 18 USCS 1512 *et seq*, under 18 USCS 1961(1)(B)** as detailed heretofore, in prior transactions.

Transaction No. 14. AK has *alleged* in Sofact para 211; in "Conspiracy to Defraud" para 22 \ page 19-20, BM directed the clerical staff to send a letter [P-21-A] to AK.. This act by BM was, to create a "smoke screen" and to mislead AK.

In causing this letter [P-21-A] to be sent to AK; BM

violated NYS Penal Code 190.05 and 190.07 as well as statutes relating to conspiracy, to wit sections 105.05, 105.10, 105.13, 105.15, 105.17 as well as tampering with witness, victim etc. sections 215.10, 215.11, 215.12; 215.13.The penalties, based upon the severity of the violation (Misdemeanor\level and Felony\level) are identified in prior transactions and are incorporated by reference. BM violated **18 USCS 1961(1)(B) and 18 USCS 1512 et seq** for mailing [P-21 A] by U. S. Mail and violated **18 USCS 1341** and **18 USCS 1961(1)(B).**

Transaction No. 15. Then came the decision of the Rockland Court [P-22], that was totally shocking to AK. The decision admits... 1) improprieties in Motion Practice... but does not identify how they were perpetrated, when they occurred and who were responsible for them 2) dismisses the actions against GEICO; even after "consolidating, all motions, to arrive at a decision". There is no reference to AK Exhibits P-17 and P-17-A; anywhere in P-22.

Since GEICO never presented any "affidavit of any of it's employees or officers" nor contested the P-17 and P-17-A [AK Exhibits], the action was dismissed, under the *"guise of No Private Right Of Action"* to AK [claiming--- AK did not have Privity of contract with GEICO].

AK has *alleged,* in Sofact Para 212 to 219.; as well as *alleged* in the "Conspiracy To Defraud" section under para 5-d 26 \ page 11 to para 22 \ page 19 and also *alleged* in the "Civil Rights" section, from Para 22-n \ page 7 to para 48 \ page 18; that the entire scheme to defraud was well planned, organised, executed and attempts have been made to "cover up" the scheme.

In fact, the *allegations* in "Conspiracy to Defraud"; those

particularly in para 11 \ Page 15 to para 16 \ page 17 clearly direct the Federal Court, to consider, that, all the defendants being attorneys, admitted to practice law and have taken their oath to conduct themselves pursuant to **22 NYCRR 1200** ***et seq***; each one of them (individual) recklessly chose to violate **22 NYCRR 1200** ***et seq***.

The Court decision, under the "able guidance" of BM was the "ultimate act" of "fraud" perpetrated by BM, contrary to NYS Constitution, NYS CPLR statutes, decisions of the NYS Courts and violative of several NYS Penal Code sections.

AK has also alleged, that, BM was "suitably rewarded" for his role.. Please see "Conspiracy to Defraud"..para 29 \ page 22 and para 30 \ page 23. And that, the entire "scheme" was "fabricated" piece by piece, on a continual basis by "concealing it from Meehan. J", as further *alleged* in para 33 and 34 n page 23 of "Conspiracy to Defraud-section". BM violated **18 USCS 1961(1)(B) and 18 USCS 1512 et seq** for mailing [P-22] by U. S. Mail and violated **18 USCS 1341.** and **18 USCS 1961(1)(B).**

Transaction No. 16: AK filed "notice of appeal" [Sofact para 227] wrote to Meehan J. [Sofact para 231, 233, 234] and wrote to def. Counsels [Sofact para 232] for " stay of all proceedings" pending appeal and adjournment of "settlement of judgement to Dec. 15, 1995; all reflected in Exhibits P-23, P-24. There was no response from Court and by their letters P-25 & P-26; the def. Counsels refused to "stay further proceedings". The counsels, did not want to "agree" to hold their "prized" victory of dismissal, in abeyance.

In the Federal action, counsels for OMCDOC have raised the issue, to a level that is unthinkable. Attention is drawn, to the

arguments of Counsels for OMCDOC, to the effect, that, OMCDOC and it's counsels had nothing to do with the "adverse Rockland Court decision" [Counsel's affirmation Nov. 01, 1999- Para 20] but that, it was "so issued" by the Court and that OMCDOC and it's counsels, did not "play any part, in it." OMCDOC counsels did not produce any affidavit signed by either DD or WRW or any partners, officers of OMCDOC; in support of this "bizarre" statement. Now, OMCDOC want to " disassociate" from the "fatal" decision [P-22] ? Is that their "escape hatch" ? I have responded to this argument, in my Dec. 04, 1999 affidavit on page 60, that, had this argument [of OMCDOC counsel] been "so Pius", then

OMCDOC should have moved to vacate the Judgement under **CPLR 5015**. But that was not done. DD & OMCDOC and everyone, without any doubt, "savored" their victory in obtaining the judgement, against AK. In fact 22 NYCRR 1200, et seq. Obligated OMCDOC to move to vacate that fraudulent judgement. All claims, to the contrary, at this time are useless.

Transaction No. 17: Then came the next "fiasco" of "signing the GEICO favored judgement" that is alleged in Sofact para 225 to 251; "Conspiracy to Defraud" section para 25 \ page 20 to para 28 \ page 22. AK also *alleged* in the "Civil Rights" section, from Para 22-n \ page 7 to para 48 \ page 18; relating to this "scheme" to 1) BM's telephone call to DD; for a "proper" page, fr Meehan J. to sign the judgement.

As it is generally alleged in Sofact para 225 to 251; BM or Meehan J. never responded to AK's request to "adjourn" the "Judgement signing" till Dec. 15, 1995; [Please see AK Exhibits P-23, 24, 25]. AK has *alleged*, that, BM never showed AK's correspondence to Meehan [see "Conspiracy

to Defraud" para 25 e \ page 21 and para 25 g.2 \ page 21;].

In this manner, BM received the page from DD, with her letter [AK Exhibit P-27]; that is contrary to **22 NYCRR 202.48**; that mandates "rejection" of the Judgement, for the reason, it is not "ready" or "deemed submitted" to the Court. DD and BM perpetrated RICO and Civil rights violations of the same statutes.

BM, WRW, DD, OMCDOC, HYM & MMKM each violated **18 USCS 1961(1)(A)** Extorting my rights, chargeable under State Laws and for mailing, receiving [P-27] by U. S. Mail and violated **18 USCS 1341.** and **18 USCS 1961(1)(B)**; in furtherance of their scheme.

Transaction No. 18: The next disaster was the matter of "Order To Show cause" [AK Exhibit P-28 and P-29] AK took to the Court, on Dec. 13, 1995. That is *alleged* in Sofact para 244 to 247 and also *alleged* in Conspiracy to defraud, in para 27 \ page 22 to para 28 \ page 22; as well as *alleged* in the "Civil Rights" section, from Para 22-n \ page 7 to para 48 \ page 18.

BM, in fact acted to deny the O. S.C.; all on his own, without any authority; **BM stamped Meehan's name to the O. S.C.** and returned it to AK. BM "usurped Meehan's power". When BM was coming to hand over the OSC [with denial, written in his own handwriting]; he stopped over, showed [see Sofact paras 244-247] the "copy-BM was about to deliver to AK" and Meehan "nodded" after looking at it. BM was personally violating several of the same Civil Rights and RICO statutes, referred to the transactions heretofore.

Transaction No. 19: OMCDOC served the "judgement" [Exhibit P-33] on AK [Sofact para 249], by US Mail that

was obtained by fraud, described in the above transactions.

The above acts of the Federal Defendants [Fully described in Sofact as shown above, in Conspiracy to defraud; in the Civil Rights sections-under heading of 14th Amendment [Page 4], as well as Discrimination [Page 4 to 7], unequal enforcement [Page 8 to 11], Deprivation [Page 11 to 13], Due Process [Page 14 to page 18] have been in total violations of the same Federal Civil rights statutes.

State Penal Code Violations, are described in "Criminal CD" section of the complaint, that forms the principal basis of RICO claims.

Defendants violated **N. Y. States Penal** statutes section 175.30 ["A" Misdemeanor] and 175.35 Offering False Instrument [GEICO's falsely verified answer P-01] for filing. 175.35 is a "**class E"** felony, that *earns 4 years of incarceration,* upon conviction; sections relating to making "false statement" under oath, pursuant to NYS Penal laws sections 210.05, 210.10, 210.15, 210.20, 210.25, 210.30, 210.35, 210.40. Out of them 210.05, 210.35, 210.45, are **"A" Class Misdemeanors**; 210.10 & 210.40 are **Class "E" Felony**..each *earning 4 years of incarceration* upon conviction; 210.15 is **Class "D" felony,** *that earns 7 years, upon conviction.* Filing such "falsely sworn papers" in the Rockland Court, DD & OMCDC violated **NYS Penal Code** sections 195.05 ["A" Misdemeanor] and 195.07. (**obstructing Governmental Administration of Rockland Court of Meehan J.)** 195.07 is **Class "E" Felony**..*earning 4 years of incarceration* upon conviction. The cumulative effect of the "above violations" of penal NYS and U.S. Penal statutes by DD caused violation of **NYS Penal Code** section 215.45
(compounding crime); that is **Class "E" Felony**..each

earning 4 years of incarceration upon conviction.

The defendants have "earned multiple violations of following **NYS Penal Code section** 195-05 ["A" Misdemeanor] and 195-07 ["E" Felony]; as well as section 175.30 ["A" Misdemeanor], 175.35 ["E" Felony], 190.60 ["B" Misdemeanor], 190.65 ["E" Felony]; 105.00 ["B" Misdemeanor]; 105.05 ["A" Misdemeanor]; 105.10 ["E" Felony; 105.15 ["B" Felony]; 215.10 ["A" Misdemeanor]; 215.11 ["E" Felony]; 215.12 ["D" Felony]; 215.13 ["B" Felony] and 460.20 ["B" Felony]

This must show, that, a every act of serving and filing a motion and the correspondence in support of the scheme is subject of so many penal violations.

DD, OMCDOC, HYM and MMKM" filing the motions was, in fact, a "routine and senseless acts, they have developed and perfected over a long time, **contrary to the spirit and letter of laws**, as means to conduct their law practice and *boost their billing*". DD used her "motion practice" as an instrument to defraud AK, for his being a "Pro-Se" litigant. AK has "argued" in his affidavits, that, "such senseless motion practice is *the bread and butter* of all attorneys" and "that" motion did not reflect any "good faith effort" on the part of DD, to resolve any issue at all. Besides, in her affirmation [HYM Exhibit "JJ"] DD demonstrated numerous "misconceptions of laws", upon which I have reflected in detail, in my affidavits in Rockland action. By "serving and filing, such motion" DD violated 22 NYCRR 1200 *et seq*.

DD and HYM used, their *"motions" as "instruments*, with far reaching effects, of her scheme, to defraud AK". The Motion practice was not an "incidental" but a "well calculated and deliberate act".

In fact, the same acts also constitute violations of **18 USCS 1512(b), 18 USCS 1512(b)(2)(A)** and the same acts also constitute violations of **18 USCS 1512(b)** [relating to tampering with witness, victim or an informant]..... that "statute" in part states.. As follows.....whoever knowingly uses *intimidation* or *corruptly persuades another person* to (1) influence, delay or prevent testimony.....also violates **18 USCS 1512(b)(2)(A)**.. Withhold testimony or withhold a record from an official proceeding (Rockland state action)and **18 USCS 1512(b)(2)(C)**.. evade legal process summoning a witness, or to produce record, documents or other object, in an official proceeding.

Avoidance Of Trial: AK demanded "trial of issues he raised on motion" (see *allegations* in Sofact paras 84 & 85, 95) pursuant to **CPLR 3212** and **2218**. AK intended to produce "employees of NYS Insurance Department - to offer evidence, through their "oral testimony" along with documentary evidence; supporting his claims, that GEICO had violated **NYS Insurance Laws** and particularly including those, but not exclusively relating to claims of Third Parties, like AK, in the past and GEICO was "cited by NYS Insurance Department, upon finding such violations" and that GEICO paid civil penalties. [reflected in AK Exhibits P-01A, P-17 & P-17A]. This claim was establishing a "pattern of misconduct, on the part of GEICO".

Allegations, in **"Conspiracy to Defraud"** in Para 3 \ page 3 to Para 6 \ Page 12; Para 14 \ Page 16; and *Allegations*, in the **"Civil Rights"** section under Para 22 d \ Page 5; in Para 22 n to p and Para 23 \ Page 7 under subtitle Discrimination; Para 24 \ Page 8, to Para 27 \ Page 10; under sub-title "Deprivation" from Para 34 \ Page 11 to Para 41 \ Page 13; as well as the entire sub-title "Due Process" from Para 42 \ page 14 to para 48 \ Page 18. All of them relate to BM's

actions, in concert with other defendants, relating to the issues of a " denial of Trial of Issues, AK raised".

The defendants, through and including BM; "successfully" influenced J. Meehan and prevailed upon J. Meehan in preventing conduct of "any trial, in open Court, with or without jury ", in State proceedings, simply by "dismissing" the entire action. The Exhibits P-01A, P-17 & P-17A completely supported AK's "two causes of action against GEICO".

It is a fact that *NYS Constitution Article 1, section 2* provides for Jury Trial, unless "waived by a party". AK never waived his right to a Jury Trial. There is a "clear" reference to Jury Trial in **CPLR 2218** and AK demanded it, through his affidavit of July 14, 1995 [HYM Exhibit "M"] and in subsequent affidavits.

All the Federal defendants, successfully prevented the NYS Constitutionally guaranteed "trial by Jury"; from "ever taking place". That is apparent, from the order of Rockland Court, Exhibited in AK Exhibit P-22 and P-33. AK has alleged, that BM "drafted" the "Court order- P-22" that constituted "basis" for subsequent Judgements P-33, P-35, P-37 affirming discrimination and deprivation.

There is absolutely "no question" that, the Federal defendants were totally successful in preventing AK from conducting any trial, presenting any evidence, calling any witnesses to testify before any jury or in the open Court, before Meehan J., on the record; at any time. This was active violation pf **18 USCS 1512** *et seq, discussed heretofore.*

Summary Of Arguments

1) I have presented my claims, in accordance with applicable statutory requirements, within the "judicially determined and accepted principles" for recovery of damages, for the multiple frauds, defendants perpetrated against me; during the Rockland Court proceedings. The Judgement of the U. S. District Court, that is inconsistent with the Law Of the Land, must be reversed.

2) I had constitutional rights, for "due process, equal protection of laws, fair judicial proceedings, no deprivation- at any time and unambiguous civil conduct, while my case was before J. Meehan, in Rockland County Court, in 1995.. The defendants, acting together, actively engaged in acts violating penal, procedural and Civil Right statutes, at every step and have damaged me, deprived me of my rights and property.

Arguments

1) I filed this action in less than three years, of my discovering the "mechanism of the injury [Please see Sofact para 269, 270, 272, 273, 274] and I fact "understood" the "implications of July 20, 1995 letter, in early part of 1998. After discovering the essential and central element of the major fraud, I commenced research of the applicable Federal Laws, for filing this action. After receiving the decision of the N. Y. State Supreme Court, Appellate Division-2nd Department, I made every effort, to understand the "basis" of that decision; could not determine as to "what evidence, it refereed to have been submitted by OMCDOC, for GEICO, to sustain the Rockland Court Judgement. After numerous careful reviews of the NY Statutes and NYCRR under title 22; I found the "Achilles heel" in the HYM letter, P-13. Till then, *I could not detect the "trickery" by HYM, in that letter*. The Appellate Division, did not bother [considering that the

Four Judges- are presumably far more competent, in law than I was and who had duty to review "facts and law" under CPLR] to review anything carefully and reverse the judgement.

2) My Federal complaint conforms to **FRCP Rule** 8(a), 8(e) and has served the "principal purpose" of giving Notice to the defendants of my claims against them. That is also evinced by the fact, that, HYM and MMKM have served and filed their answer, wherein HYM and MMKM have admitted several allegations in my complaint, without any reservations. Had my complaint been "so deficient" as the USDC claims, then, HYM and MMKM would not have even filed their answer under FRCP Rule 8(b) and 8(c), that contains several "admissions". All of the admissions are analysed in detail, in my affidavits of Dec. 04, 1999 and Dec. 17, 1999, along with it's implications in the accompanying memorandum of laws, in the motion practice. I have attached a total of 46 Exhibits [some with multiple pages] in support of my statements.

The sections, "Conspiracy To Defraud", Criminal Conduct of CD and RICO describe the defendant's Fraud in every detail and conforms to FRCP Rule 9(b).

FRCP Rule 8(f) demands that pleading "shall be so construed, to do substantial justice".

The complaint conforms to FRCP Rule 10(a), Rule 10(b)

3) All defendants filed their motions, for "dismissal", wherein only HYM filed and affidavit, under his signature. Counsels for other defendants filed their "affirmations" and those affirmations, cannot form the basis, equal to the "affidavits made upon personal knowledge" and have been

deficient, misleading and erroneous. I have extensively analysed the "affirmation" of the Asst. Attorney General of New York; wherein he has mislead and corrupted the record of the USDC, in claiming that, my claim is against the State Of New York and therefore "barred" by the eleventh amendment [my response on page 13 of 52 to my memorandum of law of Decd. 06, 1999]. My arguments are also detailed in this brief, under "BM should NOT have any immunity, infra.

The defendants have also mislead and corrupted the USDC record by claiming defense under Rooker-Feldman, Res Judicata, throughout their submission, to which I have responded in my Dec. 06, 1999 [Law memo page 3 to 11 of 52]. I have conclusively shown, that, the defendant's arguments and presentations [also subject to FRCP Rule 11] are "misrepresentations". Nevertheless, the USDC considered all of them and issued it's decision in their favor. I would suggest, that, the defendant's approach is to "materially deviate" the matter and create "chaos" in the record. The defendants have completely succeeded in their efforts in obtaining the dismissal, of my action.

Therefore, the decision, order and judgement are in violation of the U. S. Supreme Court mandates and must be reversed.

4) HYM filed his motion for summary judgment, served and filed an affidavit that is "false and in fact contradicts his own answer". I have extensively discussed this matter in my affidavit of December 4, 1999 as well as December 17, 1999. Primarily the HYM affidavit denies the same "allegations" he has "admitted" in his answers and therefore this is a continuation of the fraud upon this jurisprudence and this plaintiff appellant. It is unfortunate that in spite of my pointing out each and every aspect of

HYM fault through my affidavits, the District Court chose to grant the defendants' motion. It is also ironic that by a letter of December 10, 1999 the District Court extended time for me to respond to the motion for HYM summary judgment and upon my requesting "continuance" pursuant to Rule 56(f), to conduct discovery-for proper response to the HYM Motion for Summary Judgement by citing the applicable authority in a case decided by this Court, the District Court *"ignored my request for any discovery"* and granted the motion for HYM.. This dismissal therefore contradicts, impairs and frustrate the "directive of the Congress" expressed through passage of the **FRCP 56**.

Since, it is HYM created the contradictions, he is bound to "explain" to the jurors, as to why he filed his affidavit, that contradicts HYM answer, that he chose to file under **FRCP Rule** 8(b) and 89[c] and subject to **FRCP Rule 11** mandate.

Not only that, but HYM has submitted his own "affirmation" dated July 19, 1995; in support of his motion, made returnable on July 21, 1995; that is served with a "notice" of motion dated July 19, 1995 [all are HYM Exhibit "O"] and is supported by the affidavit of service [MMKM employee] **Bridget Smith**, dated July 20, 1995 [that is part of my Exhibit P-13, at the bottom] and it is "specifically"referred to in my Sofact para 111.

By HYM claiming, that he DID NOT violate CPLR 2215 requirement, is nothing but ludicrous. Not only that, but HYM affidavit violates **22 NYCRR 1200** et seq. By creating "appearance of impropriety" even in the Federal Proceeding. Of course, the USDC did not care about any of it.

5) Bruce Muldoon should not get any immunity on account of the details cited.

The NY State Legislature has established CPLR and the Chief Administrator Of The Courts have established the NYCRR under title 22; relating to motion practice. All the state courts have been adjudicating thousands of cases under those Laws and Rules. I was *entitled to get the same protection of law as anyone else*. The record *clearly* show that this equal protection of law offered by NYS Courts, pursuant to the guarantees in the Constitution of the State of New York was completely ignored in my case and my rights, under the NYS laws and Constitution and consequently under the U. S. Constitution and U. S. Laws were violated. I have claimed, that BM was directly responsible, for these violations. I have already discussed the matter of "Equal Protection" [under my Dec. 06, 1999 affidavit-page 5, 46 and 53.]

May I suggest, that, Bruce Muldoon [BM], working as a law secretary, for Rockland county Supreme Court Justice Meehan, [please see my 12-06-99 affidavit page 7 NY Judiciary law section 36]; was *empowered and entrusted with the duties to conduct research of law* to assist Justice Meehan , in rendering decisions to the litigants in Rockland Court. Not only that, but Justice Meehan presides over *Criminal trials* under the NYS Penal Laws, most of the time. Under the circumstances defendant BM was more than familiar with the Constitutional Provisions and laws applicable to adjudication, in the matters before the Supreme Court in Rockland county. Any claim, by BM, otherwise may raise *extremely serious questions* as to **whether the criminal defendants** in Justice Meehan's court *receive justice according to the constitution and law or not*.

In the same manner, when BM took any decisions [please see transactions No. 4, 6, 7, 9, 13, 14, 15, 17, 18, in this brief

] and acted pursuant to the communications he received from the defendant counsels in this action or in violation of the instructions he may have received from Justice Meehan; BM did not have to take any split-second decision, that is similar to "police officers where "the police" may perceive danger to themselves and therefore may act to save their own lives or to avoid any injury to themselves. Even the letter in transaction No. 13, herein was meant for BM rather than Justice Meehan.

Under the circumstances BM was duty bound to conduct proper inquiries at all times, during my Rockland action, pending before Justice Meehan; and in fact he was duty bound under 22 NYCRR 1200 [discussed in 12-06-99 affidavit pages-15 to 17], to forestall any wrongful acts of the defendant counsels (DD, HYM, OMCDOC & MMKM) and was duty bound to provide the NYS Constitutional protection of Equal Rights pursuant to Article I, Clause 11 [discussed BM's failure in my 12-06-99 affidavit pages 48 to 56], to me, as a litigant.

It is therefore my contention, that, BM chose to ignore his "assigned" duties and in doing so he permitted defendant counsels to continuously perpetrate misconduct in the judicial proceeding against me.

Prepared and submitted by:

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(6)

Supreme Court, U.S.
FILED

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Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner
-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner
-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix E - Conforming to Rule 14.1(i)(vi)

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Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "material" if part of the Appellate Brief filed in The Court Of Appeals, for the Second Circuit, that offers a "distilled" view of the complaint including the exhibits.

This Appendix E offers material conforming to Rule 14.1(i)(vi)

This material "exclusively" refers to case No. 2 i.e. Ashok Kashelkar v Rubin & Rothman,et al

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 24, 2001

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Table Of Authorities -reproduced from my Briefs to U. S. District Court & U. S. Court Of Appeals

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Nomenclature of the abbreviations used hereunder.

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B- Brief to U. S. Court Of Appeals
RB- Reply Brief " "
RARG- Reargument Brief to " "

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15 USCA 45 et seq... .....DCM-12; B-6; RARG-6
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210.10.....DCM-6, 16, 17, 18, 20, 22, 25, 26; B-12,13
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Following is a Portion of My arguments from my Memorandum of Laws, in the District Court-Motion Practice.. Page reference 2 of 52 and so on, are from that Law Memo.

Def. Household Bank FSB's legal presence was in Illinois only.

It is necessary to "know the philosophy" of Household International (HI) business and the Laws, to understand my case

"The Debts" defendant's HI & HB-FSB, "'tried to or have collected in New York State",.from anyone, were not lawfully "extended credit **by the defendants** outside the State Of Illinois, "within a radius of 100 miles of Household Bank's principal office" at Prospect Heights, ILL; as defined in 12 CFR 561 32(a)(2)

This (U S D C SDNY) Court is requested to take judicial notice" of the fact, that, Prospect Heights and or Wood Dale, Illinois are more than l00 miles away, from ANY Geographic BOUNDARY' of New York State (the western most point, at the Erie, PA border).

Household Bank FSB (HB-FSB), must conduct it's business, subject to 12 USCS 1464 as well as subject to by 12 CFR 500 *et seq.* Defendant's business is further subject to the limitations in 15 USCS 41, *et seq.*

Defendant HI and HB-FSB's "principal" activities are monitored by the Office Of Thrift Supervision; a body within the U S Dept. Of Treasury and not by any State Authorities However, that does not permit the defendant's from conducting their activities, without any restraints by the "States ".

12 CFR 535.1 refers to "application of 15 USCS 41 et seq"; referring to Federal Trade Commission act (predominantly concerns with Interstate transaction affecting commerce)

"Statement of Policy" under section 12 CFR 556 *prohibits branching,* outside the State, in which it has it's home office (that would require HB-FSB to remain in State Of Illinois) Opening such branches also constitutes violation of 14 USCS 14645(r) [as recognized in 12 CFR 556.5(b)(1)] Provisions, for conducting "direct " business out of the State Of Illinois, is limited, under the cited subdivisions.

The "lending and investment" by Federal Savings Association (Bank) is limited by 12 CFR 560.93. This Section does not authorize, "*offering or mailing* **UNSOLICITED checks**, in Interstate Commerce, through U S Mail".

The "consumer credit"; Household Federal Savings Bank "may offer or extend" is defined in 12 CFR 561.2 and the "normal lending territory" is defined in 12 CFR 561.32.

The principal "reach " of the Household FSB business is identified to be for 1) credit for purchase of household goods 2) towards "real estate" and 3) loans secured by "real estate" within the limits of 12 CFR 500 *et seq* as well as 12 USCS 1464, *et seq*.

In fact 12 CFR 560.93(5) defines as to "whom a loan can be advanced"

For the above reasons, HB-FSB could not "open" any branch in Virginia, did not have any "branch" in Virginia, nor had "any office" in Virginia; as demonstrated by Ptf. Ex P-45 and Ptf Ex P-35. Therefore, each and every document, that, is claimed to have been "executed by an employee of HB-FSB, in Virginia [Ptf. Ex P-06 and Ptf Ex P-36] is absolute forgery. *This plaintiff has pointed to "this pivotal" aspect* of fraud, by HI and it'S subsidiaries, since the Rockland action

This plaintiffs Exhibit No P- 55 (the annual report pages), shows, that HB-FSB "acquired" other entities in the State Of Virginia

The State Of Virginia clearly show, that, HB-FSB does not have any legal presence in the Commonwealth of Virginia (please see Exhibit P-45)

Therefore, Valerie Melvin affidavit [Ptf Ex P-36] has been *cleverly "crafted" to "camouflage",* that, she "is a recovery specialist" employed by HB-FSB. This is **an "outright false Statement**, since HB-FSB never had any 'legal presence", through "it's own office" in the State Of Virginia.

Debra Shepherd or Valerie Melvin could have been employees of any other entity, under the "control" of the

defendants but, that is not the same as calling them as employees of HB-FSB"

People making false Statements under oath have been dealt with by New York Penal laws as can be seen in *People v Moses* 63 NY 2d 299, *People v Glasper* 52 NY 2d 970; *People v Ruberto* 10 NY 2d 428 and *People v McGuire* 135 NY 639.

The denial, that is made intentionally, is treated as perjury; see *People v Gleason* 285 AD 278. Even a Village Justice was removed for signing a false Statement Re Heburn 84 NY 2d 168 (1994) The list will require volumes.

I had demanded, that Debra Shepherd appear in the Court, in Rockland Action. But Justice Rudolph ignored my request. Counsel Joseph Latona prevailed upon Justice Rudolph, through his pleas in his affirmation [P-14]

Secondary Markets for "Mortgage Finance", HB-FSB & N. Y. Business Law

This plaintiff has submitted, Exhibits No. P-57 to P- 63 (attached to the accompanying affidavit) clearly show, that, HB-FSB appear to have purchased, "Mortgage Instruments" of the people in New York State, from other "lenders", on the secondary markets.

Engaging in "purchase of Mortgages ", in secondary market, outside it ' s authorised "sphere of activity" is not permitted under 12 CFR 560.30. Therefore, HB-FSB's purchases of such Mortgages (on secondary market), while HB-FSB, does not have an ..authorized presence" in New York and using New York State Courts, for any "recovery or enforcement" is absolute violation of N Y Business Corporation Law, section 1312.

The documentary Exhibits, provided herein (Ex P- 57 to P-63) show, that, not only HB-FSB instructed

various counsels to file actions in New York Courts but in fact HB-FSB "could not care at all, as to whatever claims, it's counsel may have made" while filing "the HB-FSB authorised" Judicial proceedings, in New York Courts

The submission of this plaintiff (Exhibits P-57 to P-63) is not "exhaustive" and such "HB-FSB" actions by hundreds can be tracked, throughout the State Of New York

I shall be most happy to call each of the "individual counsel", responsible for preparing the Exhibits P-57 to P-63 and have them testify, in this Court. Most illuminating "record would be created". That will benefit, not just this Court but the Office Of Thrift Supervision, as well.

Secondary Market of "other instruments", Household & NY Business Law

In the same manner, Household Recovery Services (**HRS**) engaged in "purchasing" various "papers" with deep discounting, that may include "delinquent accounts" and even those for Household Goods, sold by other merchants, for good accounts

As, these transactions are not "subject to OTS regulations [but are subject of interest to FTC] " as those of HB-FSB are, the very. fact, that, HRS "engaging in the abuse of NY State Courts, in violation of NY Business Law, section 1312 cannot be overlooked.

That is exactly how, R&R filed the 2nd action against me,

For HRS, in Rockland county, as demonstrated in the Exhibits P-49 to P-53. HRS, purchased, some of the "papers from Chemical Bank" and others, with deep discount, hoping to "make profit, by filing actions for recovery" in New York Courts.

Chemical Bank may have "sold the papers" but Chemical did not provide any correspondence, I exchanged with Chemical Bank nor provided the "arrangements Chemical reached with me", to HRS. As soon as Chemical found that, it can "sale and unload the papers, for immediate cash [not just my account but many others]" and rather not be bothered, to live up to it's obligations to me, for the simple fact, it could not care less, as to what happened to the "understanding it reached with me".

In fact, "Chemical" itself was merging with "Chase" and two of it's officials, who were dealing with me, were discharged" in the other big game of " high finance " called "merger and acquisition".

Household Credit Services & N. Y. Business Law

Exhibit P-56, clearly shows, that Household Credit Services, **(HCS)** constitute a very large business ($ 10. 9 Billions in receivables. See 1994 Annual report) for HI, throughout the United States.

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When the time comes, for enforcing the contracts or making "recovery", HCS does not go to Federal Courts but goes to N Y State Courts (in New York). Why ? Because, New York Judges don't care, to read anything, when they "don't want to".

Each such 'Judicial filing" including that in Ex P-64, in New York, violates N Y State Business Corporation Law section 1312.

The Exhibit P-64 is most instructive. for it's "brazen and blatant" perjury. I have serious doubts that the defendant therein, William Schlerberl ever raised any objections "at least" under TILA (15 USCS1600 *et seq*) There are definite provisions as to what the "debt collectors can do and what they cannot.

Mr. William Schierberl was (or perhaps still is) a partner in Wilson, Elser, et al; a Law Firm. that handles casualty related litigations (similar to MacCartney or O'Connor, McGuiness et al), for insurance carriers. It is most likely, that William Schierberl ESQ, being a practicing attorney was prepared to accept any statements (in complaint) from other practicing "attorney to be"accurate and not question it, at all. I doubt, he looked at NYS Business Corp Law. I understand the operative phrase for this conduct is "due deference".

I wonder how William Schierberl, ESQ or Samuel Newman, ESQ would testify, to simple questions about their litigation and the truth in the complaint, "tailor made" for the benefits of HCS..

Reckless disregard by HI "agents" (The Attorneys)

Not only HI subsidiaries abuse thc New York Courts but "recklessly make claims", it considers necessary to "gain entry" in New York Courts, including claims, to the effect that, HB-FSB has authority to do business in New York, [status statement required by CPLR 3015(b) & (c)] (also exemplified by Ex P-O5), Exhibits P-37, P-46, P-47, P-48, P-49, P-57, P-58, P-59, P-60, P-6I, P-62, P-63 and P-64.

This reflects upon the "total and reckless disregard" HB-FSB" have shown to the New York State, in the abuse of the State resources. It is also true, that the "courts are loathe to such conduct" and could not care "how" it ' s officers (either the counsels or the Judges) are discharging their duties

This pattern of conduct by HB-FSB, perpetrated for them by and through it's .'agents" the "respected pillars of the society" and "officers of Court"; caused multiple violations of numerous State and Federal laws. Including those relating to .'perjury , obstruction of justice, mail frauds, wire frauds and eventually Civil Rights violations of hundreds of people in New York State

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The "customs and practices" of New York Courts and it's "officers" [including the judges] to accept each others actions and representations without ANY QUESTIONS, is absolutely phenomenal. That is how the "business in Courts" is conducted.

Whether Mr Schierberl owed any money to HCS is not a question, for this argument but whether any of the subsidiary of HI conducts it's business, according to the law or not, is the "operative and relevant question". The evidence is clear, that, HCS, like other HI subsidiaries, could not care less about law.

In the current action, with all the deficiencies in the HFC Cash reserve agreement, I have pointed out, that the current counsel for the defendants should have known; that did not "stop " him from claiming, that, there was a contract. This is a perfect example of "reckless disregard to truth, his own oath and his professional and ethical duty" Counsel

Gershman is violating his duties under 22 NYCRR 1200 *et seq*.

I raised following question in Rockland action and would raise it here, again. If illegal conduct such as those of HI and it ' s subsidiaries and reckless claims, submitted by counsel of multibillion dollar corporations are given "credence" in New York Courts, perhaps the " street drug dealers" should go to Court, to recover monies people owe them.

Of course, a debtor of "a drug dealer" at present, may "face" either a "gun or knife" [by the enforcers] instead of an adverse Court judgement. If the drug dealers, go to Court, to enforce their "contracts" [they certainly would be within the STATUTE OF FRAUD] at least the lives, of the "drugees" may be spared.

It is "openly reported in the media [including TV shows, films]", that, drug dealers, do not want to KILL their clients. That is loss of future business and possible criminal problems. They would rather "negotiate" a deal, for getting their money due. Then they can return for "more business".

Drug dealer's "commercial mindedness" for "long term profit motive" is not of any lessor caliber, than of those in "Ivory Tower" in Prospect Heights, ILL.

The perpetrators in "diverse" locations may appear different, may speak with varying degree of "finesse", may enjoy different life style but have the same "profit motives"

I do not have any doubts, that, HI entities, also , would rather collect "high interest money", for a long time, than sue a person, [Please see Exhibit P- 73] Their real interest is "generating profit, for their shareholders ".

It must be kept in sight that, not only "false statements" under OATH, have been recklessly made by all the (HI) counsels, in various cases NEWLY attached as Exhibits; but caused, each of the counsel to violate **N . Y Penal Law** sections (**Relating to Perjury**) 210.05; 210.10; 210.15, 210.20; 210.35; 210.40; 210.45 But the counsels have filed those "**verified complaints**" (Exhibits P-57 to P-64) in Courts. Those acts, by themselves rise to (**offering false instruments for filing**) under NYS Penal Code 175.30 and 175.35 (**class "E" felony**.). Counsels are in further violation of N Y. S. Penal code 190.50 (**unlawful collection practices**) and N Y. S Penal Code sections 105.00; 105.05; 105.10; 105.13; 105.15; 105.17 (**Conspiracy**); 215.35; 215.40 (Tampering with physical Evidence); and 215.45 (**Compounding crime**) Thereby the same actions gave rise to violations under sections 460.20 (**Racketeering**) "**Fabrication**" is violation of N Y S Penal Code sections 175.05,175.10; 175.15; 215.35; and 215.40 (**Falsifying business record**) These are all NY. State Felonies and Misdemeanors, (identified in detail, for their Severity," **in Criminal CD section Page 8, Para 25 J to 25 m [on page 9]**)

Each counsel also violated 15 USCS 1692 *et seq* and specifically violating l5 USCA 1692e(2)(A); l5 USCA 1692f(1) ; 15 USCA l6921(2)(A): upon their filing the actions described in Exhibits P-57 to P-64 **as Debt Collectors.**

Each counsel is subject to "same treatment, at Law and no less" than *Moses*, supra 63 NY 2d 299; *Glasper*, supra 52 NY 2d 970; *Ruberto,* supra 10 NY 2d 428, *McGuire*, supra 135 NY 639; *Gleason* supra 285 AD 278; Re *Heburn*, supra 84 NY 2d 168 (1994); *Greene*, supra 205 AD 2d 218; Re

Kaiser, supra 108 AD 2d 510, as well as famous "Murray Eisen" as he was known.

Each of the counsel, was (I am speculating here) more than successful to either "get judgement in foreclosure" or reach a settlement of some sort, with each respective defendants, in those actions. In any event, the proceeds were, then sent to HB-FSB by FedEx or U S. Mail or Air Borne Express etc. for the benefit of the Household shareholders, and violated **18 USCA 1341.** Each counsel's, each separate mailing become a separate Mail fraud" as determined in *Ex Parte Henry* 123 US 372, 374.

Each of the counsel, for Household companies, used Interstate Telephone systems, to "further their schemes" to "IN F ACT" defraud those defendants" and violated **18 USCA 1343.**

Those who lost their "properties", on account of such frauds, were deprived of "equal protection of laws" in the Judicial process. Some of them were let down by their own counsels, for their failure to investigate the law

Such is a "massive scheme" to defraud, people in general

In my answer to the complaint in Rockland County, I pleaded an "affirmative defense" that, the plaintiff there [HFC Cash Reserve-Div Of HB-FSB] engaged in "non traditional" businesses. R&R never asked for any Bill of Particulars, from me in 1994.

39 USCA 3009 and Household Bank FSB

Referring to 39 USCS 3009. Defendant's counsel, has offered

the Kipperrnan citation 554 F 2d 377 (9th Clr 1977), to claim, that, the check, Household Bank FSB sent was not "merchandise" as defined by the Kipperman Court

Let me reproduce the principal aspects of the Kipperman decision:

> Trask. Sneed and P Kennedy, Circuit Judges.....
> SNEED Circuit Judge

Plaintiff-appellant Kipperman, through her father. seeks to establish a private right of action under 39 USCS §. 3009 Section 3009 makes the mailing of unsolicited "merchandise" a *per se* unfair trade practice actionable by the Federal Trade Commission Under section 3009(b), the recipient of unsolicited "merchandise" may treat the item received as a gift. The district court found there was no implied private right of action and dismissed. While we agree that the action should be dismissed, we believe the district court erred in holding that no implied private right of action exists. Thus, we affirm the dismissal of the action on grounds developed hereafter .

Discussion about Kipperman. AK suggests, that, it was necessary for plaintiff Kipperman, to "return certain application and pay a premium" in order to "commence or effect protection under insurance coverage. Kipperman failed to do so".

It is necessary to show, that, Kipperman's dismissal by the district court was based upon the DC finding that, Kipperman did not have "private rights of action ".

The 9th Circuit Court Of Appeals reversed District Court on that issue and dealt with the "merchandise" issue and dismissed because Kipperman "failed to complete a process

of returning any papers and paying any premium". The **"substance"** of placing the insurance policy in effect, was never completed.

In my (AK) case, it was not necessary, for me, to "return any papers to HB-FSB" for any reason and simply had to deposit the check in my account Therefore, my case is not "analogous'. to Kipperman, at all.

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In fact, the HB-FSB "product", I received was "ready for use or consumption, albeit by depositing in my bank". It was not necessary for me to "send anything to HB-FSB."

That is not much different, than, my using a " box of cereal" I have received many times from Kellogg or a "bar of soap" from Dial, in the mail. It does not require me to call Kellogg, get their PRIOR permission to use the "cereal" nor call Dial to use their soap(unless some may claim, that "eating cereal" or taking shower are intervening actions).

In case of "Kipperman", the insurance policy could not "become effective" unless the insurance company received a check towards premium. At the minimum sending that "premium" check becomes, "condition precedent"; an intervening action, before there is a completion of contract.

Comparing the situation and referring to the Plaintiff Exhibit P-68, now attached with my affidavit. It was necessary for my wife , to call First Deposit National Bank, to receive a "negotiable instrument" (a check) before the value of the promised "credit.' becomes effective and useful.

Since, my wife did not call, nor received any (unsolicited) check, there was no question of creating situation as that in

HFC Cash Reserve.

If HB-FSB wanted their "product" to conform to the "limitations of Kipperman " (decided in 1977, many years before HB-FSB mailed the check to me) or that under Exhibit P-68; then HB-FSB should have taken precaution and had responsibility to protect themselves, similar to First Deposit National Bank (Ex P-68).[still HB-FSB could not overcome the 12 CFR 500 et seq. Restraints]

In fact, HB-FSB's, own "printed" and poorly drafted, so called "agreement" *facially admits*, that, **1)** it is an offer and not a contract **2)** until "it" is accepted by Household, in Illinois.

What is that "it" referred to, in the body of statement above ? A signed application ? A signed document [Offer\agreement] received in their office in Illinois ? It cannot be their check, because, it does not go to HB-FSB; but goes to a consumer's bank, then to the Federal; Reserve system (for interbank transfers) Clearing House Therefore the "money"' is "out" before anyone sees the "check" and then questions of approving does not even arise [closing barn door after the horse bolted]

HB-FSB (management personnel) would not even see it, physically before the "funds are debited to their account" It's computer may.

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That is exactly, what I have argued, at all times (even since Rockland action), that, I never requested the funds by any means and never contacted HB-FSB, after receiving it.

To compare, the difference, as to what a "recipient of an

offer has to do"; attached exhibit (Ex P-68) with my affidavit, readily shows the major difference, in how HB-FSB were doing business as compared to First Deposit National Bank. (but not a FSB)

However, the "instruments" (in fact a check or a demand draft) Household Bank FSB mailed to thousands of people are called "*a product*" (so identified by Mr Gerbick, the Regional director of OTS, at Chicago, in his letter of Jan 25,1996; in para one) P-34.

The real test is the "condition precedent" prior to the use or consumption. None existed, as far as the check for $ 1,500.00 was concerned. Anything that followed (in the form of a check-book) without limitation of amounts, was nothing but continuation.

In fact Def Joseph Latona, in his affirmation [P-14] in para 12 admits, that the "arrangement was open ended and could continue, for lifetime". That renders any such arrangement subject to N Y S General Obligation Law, section 5- 701, that requires numerous elements including name, address, amount, date and subscription (signature), on that paper .

This is the "RISK" HB-FSB "assumed" and so far have benefitted, at the cost of thousands of people across the country. In my case, I balked. In fact, had I known the law, I would have dealt with the matter differently.

Besides, Kipperman "sued , seeking damages" under 39 USCS 3009 and District Court denied "Private right of Action ", to the plaintiff therein. The Court Of Appeals, 9th Circuit reversed "that decision ".

The "merchandise" aspect was 9th Circuit's *sua sponte* interpretation.

I am not suing under 39 USCS 3009 but pointing "to it" as the one section, most applicable to HI businesses, that HI entities "consciously.' have been violating for years. That further brings, millions of transactions of mail Fraud under 18 USCS 1341, at their door steps It also involves violations of 15 USCS 41 *et seq.*

"Merchandise & Product"

Webster's New International dictionary, 1945 Edition defines "merchandise" (a noun]. as ....

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....."object of commerce" "usually bought and sold in trade ".

Under the circumstances, may I suggest, that, there is very little difference between "merchandise" and a "product" In fact, Household International, through other subsidiaries, engages in"purchasing outstanding credit obligations, from other financial institution" and then "Household International-Companies" engage in "collection activities" as is demonstrated in Plaintiff's Exhibits No P-49 to P-52, as well as P-57 to P64

"Household" entities "purchase" such "financial papers" en mas, from other entities, as can easily be seen in the ."Exhibits". HRS purchased a "bundle of such RECEIVABLES, from Chemical" and also purchased the "Huffman Koos'" receivables and hoped, that, in each of the individual **"paper"**, they would **"collect"** the receivables" through normal course of "collection" or "through judicial actions" or as an "instrument of extension of credit '"

When HB-FSB (in illegal transaction-as described

heretofore) purchased the Dartmouth, Consolidated Financial or Fleet Mortgages, HB-FSB hoped to **"reap"** the benefits, for their own account.

Each ..such a product.. is traded among the "Financial Institution" and therefore each product "conforms'" to the definition of Merchandise.

In fact the News Article in NY Times (Exhibit P-70) also shows, that, the Wall Street Brokers have a "major"role, in the "transactions". Is there any question, that this " does not. affect Interstate Commerce" ?

In any event, the principal objective of 39 USCS 3009 is

> defined in the Statutory text, in. . . section (a) violation of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.

That certainly ties with the declared objective of Congress, to "check" "unfair business practices"; further ascertained in 12 CFR 535 .1.

Under the Circumstances, neither AK nor any of the other persons, subjected to actions in New York Court, had any legal obligation, to 'repay" any of the monies, each one received, from Household Bank FSB, under the name of HFC Cash Reserve, that was sent in violation of 15 USCS 41 *et seq*; at any time. This matter is "fit for a class action". *" I did not make the rules I am asking for enforcement."*

Following is reproduced from My Appellate Brief- to the

Second Circuit.

The jurisdictional statement

I filed this action pursuant to United States Statutes, in the U.S. District Court, on October 05, 1999, in the U. S. District Court - Southern District of New York; against all the defendants named in the action, for multiple Frauds, Extortion and Obstruction of Justice under **Title 42** for **Civil Rights** Violations and **Title 18** for **RICO** violations by all the defendants,

All the defendants are represented by a single counsel and the counsel moved under **FRCP Rule 12**, for dismissal of the matter. The counsel offered the entire Complaint in the MacCartney matter [**CA2NY Docket No. 00-7090**] as his principal Exhibit. Only the counsel should explain the reasons for this step.

After an initial conference, on Feb. 29, 2000 and my submitting detailed responses, in opposition; pursuant to the "guidelines of the Court" and the FRCP Rules; the district court dismissed all of my claims; by an order dated April 29, 2000. The clerk of the District Court of entered a judgment on May 03, 2000.

This appeal is taken from each and every part of the final decision, order and judgment entered in the District Court in this matter.

Statement of issues presented for review

1) I have presented my claims, pursuant to the applicable Statutes and Rules and request reversal of the District Court Judgement, in

it's entirety, reinstate all my claims, for conclusion by a Trial before impartial Jury, presided by an impartial Judge, with complete protection of Law Of The Land.

2) Do the attorneys engaged in Law Practice ***have immunity***, protection or waiver under the laws and constitution of the United States.

A) That permits them to perpetrate misconduct during the course of a judicial proceedings in this jurisdiction and further

B) That permits the attorneys to escape from "application of laws, rules and regulations" to their misconduct; wherein they do not have to answer to anyone, in Civil Litigation and further

C) Permits such [in A & B above] attorneys to "inflict damages" to the rights and property of other individuals with impunity and not have to stand trial in a Civil Action; before an impartial jury, in a Federal court and further

D) Is it proper for the State or Federal Courts to "impliedly or implicitly" grant protection-to attorneys, that is explicitly not provided by Constitution or the laws ?

3) Is it proper for a Judge, either in the State Courts or in the Federal Court to ignore the mandates and intentions of the U. S. Congress, The Federal Statutes, the rulings \decisions of the U. S. Supreme Court and *railroad* a litigant ?

4) Has there been explicit directives or intentions expressed by the U. S. Congress, that permits:

A The counsels and litigants to engage in "predatory Motion practice", using the FRCP Rules, to effectively destroy party's claims ?

B Anyone [counsels or judges] to mis-state, mislead, misconstrue, contaminate and corrupt the Judicial record to accomplish the goal of destroying any litigant, under the guise of representing any litigants and\or adjudicating any case ?

Statement of the case.

This case arises out of the defendants knowingly perpetrating multiple frauds, extorting and depriving me of my rights and property, during a N. Y. State judicial proceedings these Federal defendants filed in Rockland County against me. Beginning in Sept. 1994. R&R counsels made false statements, in their verified complaints, affirmations; procured and induced others to procure fabricated evidence from it's principals [HI] employees and\or officials; used the fabricated evidentiary documents, in the Rockland Action; influenced the Rockland County Justice Rudolph and eventually obtained a judgement, by frauds, against me.

During the ensuing motion practice, the Federal defendants commenced in Rockland Court; and in response to which, I opposed their presentation. Defendants prevailed upon Justice Rudolph sufficiently enough to influence him to issue a decision and order, in favor of their principals, Federal Defendants.

All the defendants engaged and induced others to engage in conspiratorial acts, in the eventual and successful multiple frauds by using Interstate Telephone Systems, thereby violating **18 USCS 1343,** U. S. Mail and Private Mail Carriers, violating **18 USCS 1341.** All of which interfered with my Constitutionally protected rights, defrauded me of equal protection of laws, guaranteed by the New York State as well as U. S. Constitutions; knowingly abused the State judicial process, in Rockland County, NY.; in total contradiction and violations of the State and U. S. Constitution and Laws; to deprive me of my rights as well as my property.

The defendants violated numerous NYS Penal, Banking, General Obligation and Business Laws; in the process; all of which have been identified and referred to in detail in the Motion practice.

The defendants deprived me of "my rights and access to my property" and in doing so inflicted heavy losses upon me. The defendants obtained "judgement by Fraud" for their clients.

I filed this action, against the individuals and entities, named in the Summons and Complaint, who have been responsible to cause damages to my rights and property, pursuant to **42 USCS 1981; 42 USCS 1983; 42 USCS 1985** as well as under **18 USCS 1961,** ***et seq;*** upon my finding and understanding the **"mechanism of their fraud"**, in order to state my claims under the Federal Rules Of Civil Procedures. The defendants also violated **18 USCS 1512,** ***et seq;*** and **18 USCS 1951.**

The misconduct of all the defendants is so "serious, pervasive, calculated, reckless, reprehensible and uncivilized and demonstrating their contempt for the Laws and the U. S.

Constitution", that, each of them *can also be charged* under **18 USCS 241, 18 USCS 242 and 18 USCS 245.**

I have also shown, that the HI defendants, violated **12 USCS 1464, 12 CFR 500** *et seq and* **15 USCS 41**, *et seq*. During the course of conducting their business and such violations, in fact gave rise to the situations of their conducting transactions, which have been the principal aspects of this litigation.

My complaint contains, Statement Of Facts [chronological statement of events describing over 20 major and some minor transactions]; Conspiracy to Defraud- that alleges actions of the defendants engaging in conspiracies; Principles and Basis of Civil Rights-outlining the-Statutory and Decisional base of my claims; Criminal Conduct of CD-outlining the criminality in the defendant's multiple transactions and RICO; outlining the elements required constituting RICO claims-including clear allegations of each defendants violations. In addition to which, a "Formal Complaint" of 16 counts, against all the defendants, brings together the "essential elements of all of the above sections" with demands for relief. I have also attached part of the "State Proceeding" as Exhibits, with the complaint, that was filed and served, on all defendants.

Summons and complaints were filed and served on the defendants, pursuant to the FRCP Rules; the defendants, appearing through their counsel moved to dismiss the action pursuant to **FRCP Rule 12** to which I submitted my opposition with additional affidavit, exhibits and request for amendment [**FRCP Rule 15**]to complaint [adding more material] but the District Court granted the defendant's motions and dismissed the case.

District Court stayed all discoveries and none was conducted.

This action is a "COMPLEX LITIGATION".

I did not make any of the rules. I asked for enforcement, from the persons entrusted with the requisite authority.

Justice Rudolph of Rockland County refused to " discharge his constitutional duty" and so the USDJ Hon. Colleen McMahon, refused to discharge her constitutional duty and *enforce the applicable Federal laws*".

Defendant's counsel attached the entire complaint MacCartney matter as his exhibit.

Under the Circumstances, I am referring to my Appendix, Brief and the Reply Brief, in the MacCartney matter [USCA Docket No. 00-7090], by incorporation in this brief.

Action against Rubin & Rothman, various individual counsels and Businesses under Household Names

The defendant counsels used "falsely sworn affidavits of others "and falsely swore their own affirmations, actively caused to procure and submit perjurious affidavits, fabricated evidence, in Rockland County Judicial Proceedings [hereinafter RCJP]. Def. Counsel's actions have been fully supported and assisted by their principals, [The HI Companies] solely for pecuniary benefits, no matter what the laws "required of them". **That is the CRUX of my federal complaint.** All the statutory violations of defendants have been "briefed". **ALL OF THIS IS DOCUMENTED.**

Def. Household Bank FSB's "legal" presence was in Illinois only.

Household Bank FSB (HB-FSB), exists and must conduct all

it's business, subject to **12 USCS 1464** as well as pursuant to **12 CFR 500** *et seq*. Defendant [HB-FSB; HI and it's subsidiaries] business is further subject to the limitations in **15 USCS 41**, *et seq*.. The HI defendants are also subject to monitoring by the Office Of Thrift Supervision; a body within the U. S. Dept. Of Treasury. These statutes and regulations prohibited HI from doing any business outside Illinois and certainly not in New York, in the manner "did engage in". This matter has been briefed in minute detail, in the USDC motion practice.

Def. Household International and it's subsidiaries exploited New York Courts, by "recklessly making claims", it considered necessary to "gain entry" in New York State Courts, including those to the effect that, HI subsidiaries had\have authority to transact business in New York; evinced by Exhibits P-05, P-37, P-46, P-47, P-48, P-49, P-57, P-58, P-59, P-60, P-61, P-62, P-63 and P-64.This EVIDENCE reflects upon the "total and reckless disregard" HB-FSB" have shown to the New York State, in the abuse of the State resources.

The documentary evidence provided in (in above para) this action (including that submitted in the Motion practice) show, that, not only various HI counsels filed numerous actions in New York Courts, as each of them pleased; but in fact HI "could not care at all, as to whatever claims, it's counsel made" while filing "the HI authorised" Judicial proceedings; as long as "the actions" resulted in Monetary gains, for HI and it's subsidiaries. It is a fact that, in this manner HI " abused N. Y. State Courts", in violation of N. Y. Business Law, NY Penal Laws, Banking Laws, General Obligation Laws and the NY Constitution.

The evidence shows, that, Def. HI are brazen, uncontrite, recalcitrant and demonstrate their moral turpitude, in the

conduct of their business affairs. HI and it's agent's [attorneys] conduct is reprehensible and is perfectly described by the words "scams, scienter and similar adjectives".

In fact the HI defendant's very act of sending the "unsolicited Checks" under the name of HFC Cash Reserve { that is synonymous with one of their own subsidiary Household Finance Corporation-commonly known as HFC ..[see P 11] } is violation of **15 USCS 1125**, that prohibits use of "false descriptions"; that did result in "likelihood of confusion" as determined by this Court in *Western Pub. Co., Inc. v Rose Art Industries, Inc.* 910 F. 2d 57 [1990]; that is very clear from the Decision and order of Justice Rudolph [P-16]. and which is also "actual confusion" of the Rockland Court, as this Court observed in *The Sports Authority, Inc. v. Prime Hospitality Corp.* 89 F.3d 955 [1996]. This Court recognized the "facial falsity" in *Johnson & Johnson v GAC Intern. Inc*,. 862 F 2d 975 CA2 (NY)(1988).

The HI and it's subsidiaries were also conducting their business in complete violation of **12 USCS 1467a[c] (1)(A)** .. *Prohibited Activities*.. That reads as follows:

> "engage in any activity or render any service for on behalf of a saving association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such saving and loan association;"...
>
> and the HI defendants continued the activities in violation of **12 USCS 1467a[c] (1)(C)**. As can be seen in Sofact paras 150, 151 & 152.

39 USCS 3009 and Household Bank FSB

I have discussed this issue, at length, in the District Court motion practice and demonstrated that, HI used it's "other"subsidiaries to transact "some" business, *for HI* that HI is "prohibited" by **12 USCS 1464, 12 CFR 500** *et seq and* **15 USCS 41**, *et seq*, to transact through HB-FSB.

In any event, the principal objective of 39 USCA 3009 is defined in the statutory text, in.... section (a) .....violation of this section constitutes an unfair method of competition and an unfair trade practice in violation of section **45(a)(1) of title 15.**

Household Bank FSB.....engaged in unlawful collection of funds, from various people in New York State

In the process, described above, pattern establishes showing HI engaged in activities of extortionate transactions, in violations of **18 USCS 1951** and **18 USCS 1952** and violated **18 USCS 1341** and **18 USCS 1343**. This matter has also been "briefed" fully well in the DC Motion practice. The other actions by the R&R counsels as well as the "other counsels" shown through Exhibits P-57 to P-64; "solidifies" my claims, that the " HI business was nothing but fraud" at every stage.

Reading ONLY the USDC order and decision must mislead anyone, that, all the defendants are innocent and are facing "unnecessary and unreasonable" Federal proceeding, in USDC. *The facts are otherwise.*

In view of the "MULTIPLE TRANSACTIONS" relating to the defendant's misconduct, I have repeated them, briefly herein. All of the transactions have been detailed in the SOFACT as well as in the Motion practice. The ***"allegations"*** are supported by Exhibits and more details and

Exhibits have been submitted in the Motion Practice, in USDC., that is part of the Record in this Court.

The USDC wrongfully, stricken my Sofact paras 136-147, along with the applicable Exhibits, under FRCP Rule 12(f). More is discussed in the analysis of the Decision.

Defendant Robin Long

Transaction 1: Def. Robin Long prepared, filed and served 1) **original complaint** [Exhibit P-05] and "certified", through her "verification" that, there exists a "corporate entity, by the name of HFC Cash Reserve (a total fabrication), under penalty of perjury.

Transaction 2: Thereafter, Robin Long mailed, a copy of the "same" complaint to AK, through US Mail, prior to filing her "Motion For Summary Judgement".

Transaction 3: Robin Long engaged Interstate Telephone System as well as U.S. Mail or other private carriers, to obtain a false affidavit from Debra Shepherd, located in the State Of Virginia, employed by one of the entities of HI.

Transaction 4: Robin Long, prepared and served an affirmation, under penalty of perjury [Ex P-07], along with affidavit of Debra Shepherd, that claimed, plaintiff [HFC Cash Reserve, Div. Of HB-FSB] employing her as recovery specialist; upon AK by US Mail.

Transaction 5: Robin Long also offered a "alleged Cash Reserve Agreement" [P-06], that was *"fabricated"* to make it appear as a single document.

Transaction 6: Thereafter, Robin Long filed the "fraudulent and fabricated papers" in Rockland County

Court" with her own affirmation and used U. S. Mail.

Transaction 7 Plus ..... Robin Long Filed a "falsely verified complaint" against Carol Campbell Exhibit P-37, dated Jan. 16, 1995; in Rockland County Court, that generated another Fraudulent Judgement, in that action. The same was served upon the defendant carol Campbell and those are other related transactions, through US Mail.

Transaction 8 plus.... Robin Long Filed a "falsely verified complaint" against Michael Fischer, as seen in Exhibit P-48, dated June 16, 1994; in Dutches County Court.

Def. Joseph Latona

Transaction 09: Joseph Latona *served* his affirmation, dated May 22, 1995 [P-14], along with "false papers-prepared by Robin Long [P-05, P-06 and P-07]" and promoted their substance "as true and accurate", upon AK, *through US Mail.*

Transaction 10: Joseph Latona *filed* his affirmation, dated May 22, 1995 [P-14], along with "false papers-prepared by Robin Long" and promoted their substance "as true and accurate", in Rockland Court, *through US Mail.* In the same affirmation, Joseph Latona implored Justice Rudolph, to deny any hearing and or trial, AK requested, in his affidavits.

Transactions 11 plus: Def. Joseph Latona engaged in numerous Telephone conversations, with HB-FSB officials, subsequent to his "assuming responsibility, to handle the file-that was subsequent to removal of Robin Long" in the early part of May 1995, to perpetuate the frauds underway..

Transaction 12: Def. Joseph Latona received RCJP decision [P-16], favoring HB-FSB, through US mail, based upon

"fraudulent papers" R&R had submitted, since commencement of the Rockland action.

Transaction 13: Def. Joseph Latona prepared and mailed "Judgement", dated Sept. 15, 1995 to the Rockland County Clerk's office, based upon the RJCP decision, that was obtained by fraud.

Transaction 14: Def. Joseph Latona received the "conformed" Judgement, from Rockland County Clerk's office.

Transaction 15: Def. Joseph Latona, served a "conformed" copy of Judgement [P-18], upon AK, through US Mail, on Oct. 11, 1995.

Transaction 17: Def. Joseph Latona served and filed another "affirmation" dated Nov. 03, 1995, by US Mail, affirming that he obtained the judgement, without malice and in conformance with the laws.

Transaction 18 plus: Def. Joseph Latona, upon receipt of AK's OSC [through US Mail, on or about March 07, 1996]- to vacate the Rockland judgement, communicated with numerous HB-FSB officials by interstate telephone systems and sent papers and material through US Mail as well as private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC.

Transaction 19 plus: Def. Joseph Latona, communicated with HB-FSB officials, at Virginia Beach, VA by interstate telephone systems and sent papers and material through US Mail as well as private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC; to obtain another fraudulent affidavit-of Valerie Melvin.

Transaction 20 : Def. Joseph Latona, communicated with Valerie Melvin, at Virginia Beach, VA by interstate telephone systems, discussed substance of her affidavit and asked her to sign the affidavit, upon receipt, before a Notary and return the same to him.

Transaction 21 : Def. Joseph Latona prepared and sent an affidavit, containing "fabricated and fraudulent" information, in the name of Valerie Melvin and sent it to Valerie Melvin through US Mail and\or through a private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC..

Transaction 22 : Def. Joseph Latona received an affidavit, containing fabricated and fraudulent information, of Valerie Melvin, who signed before a VA Notary on March 13, 1996 and returned it to him, [Joseph Latona]through US Mail and\or through a private mail carriers, in furtherance of defendant's conspiracy, to develop documents, to oppose AK's OSC..

Transaction 23 : Def. Joseph Latona, used the Valerie Melvin affidavit [P-36] and prepared his own affirmation dated March 15, 1996.

Transaction 24 : Def. Joseph Latona, thereafter but before March 26, 1996, served the Valerie Melvin affidavit along with his affirmations upon AK, through US Mail, to oppose AK's OSC.

Transaction 25 : Def. Joseph Latona, thereafter but before March 26, 1996, filed the Valerie Melvin affidavit along with his affirmations through US Mail, in Rockland County Court, to oppose AK's OSC..

Transaction 26 : Def. Joseph Latona, served his *"Sur*

Reply", dated April 16, 1996, through US Mail; in response to AK's affidavit in support of the OSC and kept on promoting *"truth"* in his Court papers.

Transaction 27 : Def. Joseph Latona, filed his "Sur Reply", dated April 16, 1996, through US Mail, in RCJP; in response to AK's affidavit in support of the OSC..

Transaction 28 : Def. Joseph Latona prepared a Summons and Verified Complaint, April 27, 1996, containing false information, against Louis F. Cruz and Pilar Cruz; caused it to be filed in Westchester County Court and had it served upon the defendant therein.

Transaction 29 : Def. Joseph Latona prepared a Summons and Verified Complaint, dated Oct.07, 1995 containing false information, against Robert P. Tocco and caused it to be filed in Westchester County Court and had it served upon the defendant therein.

Transaction 30 : Def. Joseph Latona signed a Judgement, dated June .17, 1996 obtained through frauds against Robert P. Tocco and caused it to be filed in Westchester County Clerk's office and then had it served upon the defendant therein.

Transaction 31 : Def. Joseph Latona prepared a Summons and Verified Complaint, dated May 13, 1996; containing false information, against this plaintiff-Appellant [AK], **in the name of HRS** and caused it to be filed in Rockland County Court.

Transaction 32 : Def. Joseph Latona caused the Summons and Verified Complaint, dated May 13, 1996, to be served upon this plaintiff-Appellant [AK], in the name of HRS . [transaction 31 above]

Transaction 33 : Def. Joseph Latona received this plaintiff-Appellant's [AK] answer with counterclaim and in response served a "verified reply" upon AK, through US Mail, dated July 09, 1996.

Transaction 34 : Def. Joseph Latona, in response to AK's demand for "verified Bill of Particulars"; Joseph Latona served his response, dated Oct. 08, 1996; that contradicts verified complaint [transactions 31& 32 above], through US Mail.

Transaction 35 : Def. Joseph Latona, in response to AK's demand for "verified Bill of Particulars" served his response, dated Oct. 08, 1996, with his verification dated Oct. 31, 1996; that totally contradicts the verified complaint [transactions 30 & 31 above], through US Mail. His own two contradictory verifications serve to conclusively demonstrate the fraud.

Def. Keith Rothman

Transaction 36: Keith Rothman of R&R served, information subpoenae; one each on Chemical Bank and Bank Of New York, [P-20] dated Oct. 17, 1995; pertaining to the Judgement R&R obtained for HB-FSB. Keith Rothman, is a principal in Rubin & Rothman.

Being a "principal" in Rubin & Rothman; he is accountable for each and every act of Robin Long and then of Joseph Latona. Keith Rothman permitted to use the "methods" of Robin Long and Joseph Latona to be used, ad nauseam.

Def. Scott Rumph

Transaction 37: Scott Rumph, prepared and signed a Judgement, against Carol Campbell on May 12, 1995 and

sent it to The Rockland County Clerk's office.

Rubin & Rothman

Transaction 16: R&R notified AK, through their letter of Oct. 10, 1995; that they obtained a Judgement for HB-FSB.

The above list does not include, the R&R defendants receiving my responses through US Mail; which also contribute to the list of their Mail Fraud Violations. They have received at least 25 responses from me.

All of the above cited 38 plus transactions were perpetrated, in the name of and for the benefit of Rubin & Rothman and of course, for their principals.

Majority of the above transactions, primarily relate to **1)** defendants obtaining one judgement against me [using every possible fraud] **2)** my proceeding to reverse that judgement **3)** defendants filing another action with falsely sworn papers.

This firm, R&R engaged in business as "Debt Collector" is not a "law firm" **in true sense**, even though it's principals and employees, partners or officers Keith Rothman, Joseph Latona, Robin Long and Scott Rumph have been admitted to practice law, in New York Courts. Rubin & Rothman, thrives on "illegally conducted" debt recovery business. It must be borne in mind that, R&R opened, an average of 8,000 file, every year, between 1994 and 1996. This Court would certainly understand, who can have that many files.

Criminal Conduct Of Defendants Violating N. Y. Penal Codes

Defendants "recklessly made and had other make, "false statements" under OATH, which constitute perjuries, in

affirmations, affidavits and judgement violated **NYS Penal Code** *sections* 210.05; 210.10; 210.15, 210.20; 210.35 ; 210.40; 210.45(**Perjury**); (Exhibits P- 05, 06, 07, 14, 18, 36, 39,).

In the process of "preparing, executing" those papers, defendants violated **N. Y. S Penal Code** *sections* 105.00; 105.05; 105.10; 105.13; 105.15; 105.17 (**Conspiracy**); defendants engaged in "evidence fabrication" [**Debra Shepherd and Valerie Melvin Affidavits** and "reproducing [creating] Cash Reserve agreement" from two pieces of papers violating NYS Penal Code sections 215.35; 215.40 (**Tampering with physical Evidence**); that resulted in violation of NYS Penal Code section 215.40 (**Falsifying business record**).

Then the defendants filed the papers in RCJP, in violation of **N. Y. S. Penal Code** *sections* 175.05; 175.10; 175.15; 215.35 (**Filing false papers**); That further caused, defendant to violate. **N. Y. Penal Law** sections 190.50 (**unlawful collection practices**) and; and **NYS Penal Code** section 215.45 (**Compounding crime**); thereby giving rise to violations under sections 460.20 (**Racketeering**). **These are all N. Y. State Felonies and Misdemeanors,** (identified in detail, for their Severity" in Criminal CD section Page 8, Para 25 j to 25 m [on page 9])

Defendants by their active misconduct, detailed heretofore, also violated N. Y. state statutes (Penal Code) 195.05 and 195-07; **obstructing Governmental Administration** in the second degree, has been made a part of the "Criminal Conduct" section, in para 24 e) on page 7.

Article 70 of NYS Penal Code states:

Violation of sections 105.15 and 460.20 are **"B" Class**

felonies and earn 25 years, upon conviction for each count

Section **Sentence on conviction- each count**

105.13 ,210.15 = **"D" Class felonies,** earn 7 years

105.10, 175.10, 175.35, 190.65, 195.07,
210.10, 210.40, 215.15 = **"E" Class felonies;** earn 4 years,

105.05, 175.05, 190.60, 195.00, 210.05, 210.35,
210.45 and 215.45 **are "A" Misdemeanors.**

In view of the Fac HI and it's subsidiaries, actively encouraged, assisted, supervised the R&R judicial filings against AK and took each and every step, with definitive objective of deriving every kind of pecuniary benefit, the HI defendants have aided and abated and did engage in INTERSTATE transactions to accomplish their objective, the HI defendants are also "subject to the NYS Penal statutory violations cited above".

The Defendants violated several Civil and Penal Federal statutes

The above violations consequently "trigger" violations of **18 USCS 1961 (1) (A).**

In view of the fact, the defendants used U. S. Mail in the entire scheme, as demonstrated in detail, that "triggered" violations of **18 USCS 1341.** Defendants using Interstate Telephone Systems in the entire scheme, causes violations of **18 USCS 1343.** Defendant's "impeding in the State Judicial proceedings, fabricating evidence, evading legal process to call witnesses, withholding testimony of witnesses and tampering with witnesses and\or victim causes them to

violate **18 USCS 1512** *et seq.* and also violated **18 USCS 1951.** All of these trigger multiple violations of **1961 (1) (B).**

In the process of their efforts, to collect "debt", for HI, each defendant also violated **15 USCS 1692** et seq. and specifically violating **15 USCS 1692e(2)(A).; 15 USCS 1692f(1).; 15 USCS 1692i(2)(A);** in filing, serving and mailing the above identified documents. It is immaterial, whether I am entitled to claim any damages or not, but the defendant's "conduct" must be judged, by an applicable statute.

Analysis of R&R Defendant's principal acts

Robin Long's transactions No. 1 to 6, described briefly above and "detailed in the Motion practice" relate to her *falsely sworn complaint* [P-5], *falsely induced and procured* affidavit of Debra Shepherd [P-6] and then her *own affirmation proffering and promoting* false affidavit of Debra Shepherd [P-7], submitted with the Motion for Summary Judgement.

All of the activity of Robin Long engage with "sole objectives" to secure a "judgement" favoring the R&R client, as a matter "of course", custom and practice developed over a long period of time.

Robin Long "dropped out of the picture" as soon as my "Cross Motion" reached R&R. None of the R&R counsels ever expected any "unrepresented defendants" to even prepare a "single piece of paper in opposition'. I was demanding "production: of Debra Shepherd, in Court.

The above acts and transactions caused violations of numerous NYS Penal Codes [detailed in Motion practice] and hereunder, at the end of the analysis as well as causing

violations of numerous Federal statutes under **Title 18** and **Title 42.**

Upon Robin Long's departure from the picture Def. Joseph Latona entered the picture.

Def. Joseph Latona's activities are described in Transactions No. 09 to 27 and 31 to 35.

Mr. Latona, in essence offered a "spirited offense" and "supplemented it with his own affirmation" further "assuring" Rudolph J. that he was the "Prince on White Horse". Pure as driven snow, Pius and virtuous, since he was the "Attorney admitted to practice Law" in New York Courts.

Def. Latona's "success" [P-14] to convince Justice Rudolph to... "

1) not to conduct any hearing in open Court,

2) not to call any witness by directing Def. Latona to produce Debra Shepherd (since she was beyond the states physical boundaries, for me to subpoena her).

3) wherein R&R counsels [Robin Long and Joseph Latona], *repeatedly pleaded with Justice Rudolph to "accept the Shepherd affidavit* as "the absolute truth", in their own affirmation,

as a result of which

4) Justice Rudolph, did INDEED rely, on the submitted affidavit and other "so called business record" to grant his order [P-16] and Rudolph J.

accepted each and every statement in Debra Shepherd's affidavit as "absolute truth". [Of course, unless one is willing to read the P-16, one would never understand as to what it is.]

5) **Justice Rudolph's "that reliance"** on the affidavits of Debra Shepherd and both the defendant counsel's affirmations [guarantee to the Court - by a member of the bar] has been "detrimental to me".

6) Which in turn resulted in the "judgement" that remained on the record, of the Rockland County Clerk's office, till the 7th of May 1996 [P-41].

7) Justice Rudolph accepted the "proffered" support as "business record" [CPLR 4518] and the *affidavit based upon Debra Shepherd's personal knowledge, without any ANY question.*

8) The Court order [P-16] in turn, refers to HFC as the same as HB-FSB *(in the first para itself)* resulted in favorable order and decision. [P-16].

All of this has been part of my Federal Complaint and properly Exhibited. Notwithstanding the FACTS, which include the Exhibits themselves, signed by the counsels... USDC dismissed my complaint.

Following is the analysis of the USDC decision and order.

I am reproducing the USDC decision portions, to appropriately respond, in this appeal.

1) "In this first action, Kashelkar sued the judge", [USDC-Decision & Order- P-1\Para 1\Line 2-3] This refers to my action against MacCartney et al, USCA

Doket No. 00-7090. **This statement is factually "wrong",** misleading and corrupts the Court record. Rockland County Judge Meehan is not a named defendant, anywhere, in any action, I filed.

I would like *to identify* J. Meehan [in MacCartney action] as an "unnamed [in the Federal action] co-conspirator"... This should be quite possible, since Watergate Special Counsel Leon Jaworski considered but could not indict Late President Richard Nixon and hence he was "termed" as.. "unindicted co-conspirator".. I am certain, that members of this Court are aware of that situation.

2) "Defendant's first sin was to sue Kashelkar to recover money he had borrowed from Household Bank under a line of credit. [Household action No. 1]". **[USDC-Decision &Order- P-1\Para 2\Line 4-5]**

This "issue" has been analysed and briefed in my "motion practice" in USDC, including the fact, that, there was "no contract" between HI defendants and myself.

I never "borrowed" any money from HB-FSB. I received an "unsolicited check, in the mail, for $ 1,500.00; that was in violation of **39 USCS 3009**, as a part of the HI defendant's operating their business in violation of **12 USCS 1464** *et seq*, **12 CFR 500** *et seq; and* **15 USCS 41**, *et seq*.**15 USCS 1125** *et seq*. **12 USCS 1467** *et seq*.

Not only that, but while filing that "suit" [RCJP] Robin Long and consequently Rubin & Rothman violated the above listed NYS Penal statutes and NYS Banking Law sections 669 and 671 [penal violations], briefed on page 16 of my USDC motion-law memo.

3) "Their second sin was to make a pleading error in that case, naming a banking product, rather than the lending institution itself'. **[USDC-Decision &Order- P-1\Para 2\Line 6-7]**

This is not just an error, in any letters or correspondence but it is reflected in "verified complaint" [P-05] "signed under oath" that is "riddled" with "penal violations" cited before in item 2 above.

4) "Their third was to have a misfortune to purchase a credit card debt that Kashelkar owed to Chemical Bank and to bring a suit to recover those funds."[**USDC-Decision &Order- P-1\Para 2\Line 8-10]**

The USDJ knows nothing more than Exhibits Defendants attached. Therefore, the basic problems arising out of Chemical Bank's mishandling my account, is not reflected, anywhere in any papers, that USDJ could have seen.

Under the circumstances, the "sweeping conclusions" relating to my "Chemical Bank Account" , in the USDC decision and order are "nothing but wild speculations". Therefore, USDC conclusion is " **factually "unsupported",** misleading and corrupts the Court record.

5) "They knew not with whom they were dealing." [**USDC-Decision &Order- P-1\Para 2\ Line 10-11.]**

I certainly do not read **this** *"comment" with pleasure and* as a complement to me but lodge my "strong" protest at each and every word, in the above remark..

At least, I have shown the "fortitude" to stand up for my rights. I am absolutely happy that I can at least make an efforts to "stand for my rights". There are other hundred of

thousands, either represented by counsels or otherwise, who have to be told or they found that the "Court denied your [their] case."

No one came to save **Carol Campbell** [P-37]. Whoever was the Judge in Rockland, that granted and signed the decision, for a Summary Judgement in favor of R&R and the HI; obviously did not bother to question the "veracity" of the complaint and or the affidavits and\or any other "proof" that R&R submitted [The Judge has the responsibility].

Carol Campbell, probably may have had a valid defense under the sections relating to Federal Fair Debt Collection Practice Act under **15 USCS 1600** *et seq*. And specifically those under **15 USCS 1692** *et seq*.

I was not aware of that law, at that time. Had I known that, I would have pleaded it. Justice Rudolph, who has the responsibility to take "Judicial Notice" under CPLR 4511, did not bother about **15 USCS 1600** *et seq*.; while granting the SJ Motion of R&R against me. He did not want to bother.

For that reason, I want to call him "in Federal Trial" to question about the "customs and practice" in State Courts, those "ignore attorney's misconduct".

This USDC decision does not serve the "cause of justice", It is "injudicious", is written by a person, whose "temperament and MOTIVE of writing such words" is NOW being questioned.

Such "words" show contempt and condescending attitude towards the person [That is this appellant\plaintiff] to whom the remarks apply and then who becomes a "victim" the second time around, of the "injudicious decision". The words are written with intent to humiliate me, for each and every

reason known to the writer.

USDJ McMahon, holding and swaying "judicial power" over the others, she derived out of the U. S. Constitution, that she "vowed to uphold" as a Judge- appointed for LIFETIME- is demeaning the cause of Justice in this jurisdiction.

Judge McMahon, through her remark, has offered the VERY proof to my statement, that, some persons [mostly the Euro-Centric Caucasians] have"deeply imbedded hatred towards non-whites."

Therefore, I PROTEST the above "remark" as totally prejudicial, hostile and discriminatory towards me, ON THE PART OF USDJ Hon. McMAHON.

6) "because he's a member of a minority group. [South Asian ancestry]"**[USDC-Decision &Order- P-2\Para 1\Line 4-5]**

I have never claimed, that, this [statement in item 6] was the sole reason, the HI defendants sued me but that, HI have particularly directed their "illegal business activities" towards the "minority groups" in the US. Those "illegalities" have already been cited *ad nauseam* and I need not repeat them here.

7) "that the naming of the wrong entity as the party plaintiff in Household Action No. 1 constitutes a RICO violation of frauds; and that the Rubin & Rothman defendants conspired with a state judge (again)"....**[USDC-Decision &Order- P-2\Para 2\Line 5-7]**

This is another "figment of USDJ imagination". My complaint is based upon "multiple frauds" and not

negligence. The pleading mistake were not "inadvertent". They were "full of reckless disregard". I have repeatedly stated that. It is necessary to "read my papers" to understand them.

May I respectfully refer to, the USDJ statement in the Transcript of "Oral Arguments" dated Nov. 05, 1999; in the record of MacCartney case [USCA Docket No. 00-7090]" Appendix Page 40 and my comments in my affidavit- Appendix page 18, para 29, to the effect, that, McMahon J. read only the defendant's papers.

Since, Hon. J. McMahon did not "cite" anything from my arguments, laws and Exhibits [already analyzed in detail], I would suggest that, Hon. McMahon J.; did not read my complaint, motion practice and did not pay attention to it.

8) "As these claims are no more substantial than the claims asserted in plaintiff 's prior action, for the reasons articulated by Defenders in their memorandum of law, the present claims, too, are dismissed with prejudice."**[USDC-Decision &Order- P-2\Para 2\Line 8-10]**

In view of the Fact, USDC has based every assertion and assumption on the **"prior action" [MacCartney... case]**; it is axiomatic that, each and every facet, that affected the Judgement in MacCartney case, is affecting this case.

May I refer to the MacCartney case Appendix Page 18, para 32 of my affidavit and the reference to Tr. Of Or Arg Pg 15- lines 3-7; wherein USDJ has referred to "several cases and 16 boxes" full of papers. I would suggest, those "papers have "crept" in this decision".

9) "[p]laintiff received a conditional check in the mail from Household Bank.."**[USDC-Decision &Order-P-2\Para 2\Line 4-5]**

This statement is subject to the same analysis as the item no, 2 above. The check from HI, mailed by US Postal Service, was in "absolute" violations of several Federal Statutes and even the State statutes.

10) "Household Bank's offer to open an HFC Cash Reserve Account".**[USDC-Decision &Order- P-3\Para 3\Line 2-3]**

This conclusion is equally not supported in the record and is subject to same questions as item No. 2 and No. 8, above.

11) "Household Bank then served a complaint signed by Robin long,"..... **[USDC-Decision &Order- P-3\Para 4\Line 6-7]**.

The defendants violated numerous State and Federal Penal and Civil Statutes, identified in this brief as well as those cited in the Memo of Law, submitted in Motion practice.

The USDC failed and refused to follow, the Federal Statutes and the U. S. Supreme Court decisions, before arriving at this decision-under appeal.

12) "Plaintiff contends that service of this motion constituted a violation of his right to trial"**[USDC-Decision &Order- P-3\Para 5\Line 3-4]**.

Another "totally wrong and misleading" statement in the USDC decision. I have claimed, ad nauseam, that, the **"fraudulently procured fabricated affidavits and fabricated exhibits" by the R&R counsel,** gave rise to my

demand to "question the veracity" of the evidence. Def. Long's and Latona's "affirmations, made under penalty of perjury" swayed Rudolph J.

How can USDC say, that, I cannot question the veracity of evidence ? Is that not a Rule Of Trial ? How can I properly question that, without confrontation, in open Court ?

J. Rudolph, accepted the "R&R" presentation and granted decision. That decision was "procured by fraudulent methods". NYS and US Penal Codes were violated during the process.That "forms the basis of my action" and **NOT WHAT USDC WRITES IN IT'S DECISION.**

13) "On August 24, 1995, Justice Rudolph granted Household Banks summary judgement motion and denied Plaintiff's cross motion."**[USDC-Decision &Order- P-3\Para 5 \Line 6-7]** .

USDC has failed to "cite the reasons, my cross motion was denied". It was denied, because, I could not "produce sufficient and convincing proof, to oppose the SJ. Motion." I offered, whatever "proof" was available and even though I questioned Debra Shepherd's affidavit, at length, cited the NYS Banking laws sections; J. Rudolph could not care less. He granted his decision anyway.

14) "Plaintiff claims that from April-June 1995, he was virtually precluded from working because he was devoting so much time to litigating the $ 3,200.00 action with the Household Bank."**[USDC-Decision &Order- P-4\Para 2\Line 1-2]**

This statement is partially correct but misleading. It was not only that, I was defending a $ 3,200.00 law suit but that, I was acting to "protect my property and rights". That work,

did not end, till I secured an order to vacate the Judgement, by the order of J. Rudolph.[P-41].

USDC believes that, I should have been a victim, like carol Campbell [P-37].

Since, this is not a place to "offer the proof of my losses and damages" I would reserve the matter to a date in the future.

15) "On March 06, 1996, Plaintiff filed an order to show cause or motion to vacate the judgment, on the grounds that the complaint had incorrectly named the plaintiff in the state court action."**[USDC-Decision &Order- P-4\Para 4\Line 1-3]**

This statement is also wrong. I had also claimed, that, the R&R counsel used "fabricated evidence and false affidavits and affirmations" and demanded damages under **NYS CPLR 8303-a.** J. Rudolph, not just refused to award me the damages but refused to even acknowledge in the decision that, the R&R counsel used "fabricated evidence and falsified affidavits and affirmations.

16) "Because of an error in communication between Household Bank and Rubin & Rothman,"...**[USDC-Decision &Order- P-4\Para 4\Line 3-4]**.

There was no "error" in communication. A letter or "Legal Action Advice" from John Frankovitch, of HFC Processing Services in Elmhurst Illinois, in his notification to Rubin & Rothman, dated July 13, 1994; has clearly indicated that action should be filed in the name of "Household Bank FSB-HFC Cash Reserve". This is a part of my Exhibit No. P-36.

Def. Joseph Latona "supplied it" with his affirmation [P-36]

and has referred to in para 4 of his affirmation as his Exhibit "B".

The name, as given, for action is imprinted by a "RUBBER STAMP". That would mean, that, the Rubber Stamp was used, very often. Look how "poor" is the impression.

The same "notice" also *"crossed out"* Garnish Bank Account. Nevertheless, the R&R counsels acted contrary to their client's instruction, in this respect. Please see my exhibits P-20 and P-22.

Besides, the name, as suggested in that "notice" is also not a "legal entity".The "notice" says.. "obtain judgement". Did the writer of this decision ever see that ? So much for the "competency" in the High Finance of America. [Now, HI has become a virtually defunct organization.. **Please see Exhibit P-54.** Submitted with my motion, in USDC.

USDC does not even refer to my submission of the P-54 to P-74 Exhibits anywhere, in the decision. That is not a mistake but a deliberate act.

17) "Household Bank filed a number of complaints around this time with the same infirmity". **[USDC-Decision &Order- P-4\Para 4\Line 6-7]**

Does the USDC consider that, by calling them "infirmaries" entitles the defendants to "run with the ball"? That therefore, such "infirmaries" should be to my detriment ?

I would call them **"misdemeanors and felonies"** in the NYS Penal Codes and the Federal Penal Codes. That is the very reason, the defendants, are, facing this Court.

The USDC "shrewdly" refused to refer to my Exhibits P-66

and P-67; wherein the State and Federal prosecutors have refused to, file charges against the R&R counsels, even though I filed detailed complaints and provided the "requisite proof".

This is how, "denial of equal protection of laws" triggers. Even though the Rockland DA is not named as a party defendant, that "inaction and refusal" [given to me in writing] is sufficient demonstrative, as to the "systemic deprivation and discrimination" I have claimed to be, the "norm" of the conduct and "customs and practice" in the "law enforcement.

I would strongly suggest, that, such "discrimination" is the result of the fact that, I am a member of "minority". It is reasonable to draw such inference, since there is no "acceptable" reasons, that is "justifiable" under the circumstances.

Is it not interesting that, the USDC is using the **FRCP rule 12**, so "offensively towards my case" and has refused the acknowledge the "penal violations" of the defendants.

Has Congress authorised **such "predatory" use** in Motion Practice ? Does that not "conflict" with the objectives of finding the truth ?

18) "Plaintiff does not allege any misstatements, misrepresentations or injuries in connection with the 1996 action."**[USDC-Decision &Order- P-5\Para 1\Line 6-7]**.

I have attached the Exhibits 49 to 53 and have claimed that, the 2nd complaint was also fraudulent. [Sofact paras 166 to 169] . All of which demonstrate, that, Joseph Latona's "sworn complaint" served upon me and filed in the Court, is

also subject to same Penal Violations as shown heretofore. In view of the fact, Joseph Latona's BP contradicts the complaint, in substance, that R&R could not proceed further and are "stopped in track".

In order to understand the complaint, it must be read; FIRST.

It was necessary for me to "properly prepare my responses, which required, quite a bit of research and work. I am not required to offer the details of damages in the complaint but must only allege the violation, which I have done so.

19) "Plaintiff's civil rights and negligence claims (counts 1-7) are barred because they brought within the three-year statute of limitations."...**[USDC-Decision &Order- P-5\Para 3\Line 1-2].**

I have filed my claims, pursuant to the **CPLR 213**, subdivision 1 and subdivision 8. I have briefed this matter, in details in my motion practice as well as in the MacCartney Brief, under USCA Docket No. 00-7090 [Reply Brief pages 13 to 15].

20) "All of Plaintiff's civil rights claims arose prior to October 5, 1996." **[USDC-Decision &Order- P-5\Para 4\Line 4-5]**

Since these claims are for "frauds" in Judicial Proceedings, my arguments are the same as in the item 19) above.

Now, I would like to refer to the very famous case, before Judge Korman [Chief Judge in Eastern District Of NY] wherein the "victims of Holocaust, sued the "Swiss Banks" and have **received [or there is an agreement for] a settlement of $ 1.25 BILLION DOLLARS**. Have they not made their claims after 50 years ? In the reading of the news,

in NY Times, on or about July 28, 2000; I did not get any impression that the Court struck down any of the claims, as time barred.

Is there a "custom and practice" in this Circuit, to "treat people of different origins and ethnicity, with different results?"

While as, USDJ McMahon used every "tactic" to circumvent the Constitution, Laws and the Supreme Court decisions, to dismiss my claim. Where is my "equal protection" guaranteed under the 5th amendment ?

For that reason, I have claimed, in my complaint; in the Civil Rights section, para 37 to 41, I have stated that, according to the laws and constitution "I do not have to be anyone particular" to receive equal protection. But reality is otherwise.

21) "It is a well established that attorneys are not state officers, but private persons for the purpose of Civil Rights Act"..**[USDC-Decision &Order- P-7\Para 3\Line 6-8]**.

May I refer to MacCartney Brief, under USCA Docket No. 00-7090 [Brief pages 33 to 38]. and I would also offer the following as the authority; This Court in *Texaco Inc. v. Pennzoil Co.,* 784 F.2d 1133, 1145 to 1147. (C.A. 2 (N.Y.) (1986) has held

> [O]ur ruling in *Dieffenbach v. Attorney General of Vermont,* 604 F.2d 187 (2d Cir.1979), supports the conclusion that a party acting pursuant to a state court judgment is not necessarily insulated from the reach of s 1983. In *Dieffenbach* we found that a bank was subject to suit under s 1983 when it utilized an

> allegedly unconstitutional foreclosure procedure to enforce a judgment against a mortgagor. We noted that in order to execute the judgment the bank was required to obtain a decree of foreclosure and that possession could only be gained by obtaining a writ from the clerk of the court which must be executed by a sheriff. *Id.* at 194 and n.12.

This record, amply demonstrates, that, the R&R counsels obtained the Judgement from Rockland County Judge and the Clerk. It would not have been possible, to secure such judgement except with the help of the "Rockland County Officials". Besides, the record also shows, that, the R&R defendants abused the "judicial system" with Fraudulent Evidence and each of they knew [who wants to deny that ?] that the Judgement, they enforced was "full of crime".

The R&R used the CPLR article 52, to serve the information subpoena, upon my banks and that "froze my funds".

Had the R&R defendants, "not enforced the judgement" in the manner they did [which was possible only after, Ed Gorman's [county clerk] signature stamp was placed on it. Without that, the "piece of paper" could have been nothing but garbage.

So there are at least two sets of acts involved

1) to obtain judgement by fraud and

2) to enforce it.

Defendants, used the State Laws, to enforce it. Short lived, as it was, the defendants "acquired official right" to enforce the Judgement [only with a signed order from J. Rudolph - a NYS Supreme Court Justice, in their hand] upon AK.

Personnel in Rockland County Court Clerk's office, would not have issued the Judgement, without a Court Order, in the "court File".

Thereby each defendant became a "state actor"... they saddled themselves with the Civil Rights violations under 42 USCA 1983.

22) "That by filing a meritorious summary judgement motion, the Rubin & Rothman Defendants denied plaintiff his constitutional right to a jury trial and infringed upon his First Amendment Rights."[**USDC-Decision &Order- P-8\Para 2\Line 5-7]**

I am appalled that, the USDC considers that the SJ Motion, that, the defendants filed in Rockland Action, was "meritorious".This comment turns the entire "Jurisprudence" upside down

I would offer my entire MacCartney Appendix, Brief and Reply Brief, under USCA Docket No. 00-7090; wherein the issues have been discussed in great details.

23) "Plaintiff appears to be under the misunderstanding that one is entitled to a trial before a jury in every Court case without regard to whether there exist any triable issues of fact."**[USDC-Decision &Order- P-8\Para 22\Line 7-9]**

Trial by Jury, is guaranteed by **NYS Constitution**, under **Article 1**.. [Bill of Rights] section 2.;unless waived by a party. The record is "replete" that, in fact I demanded the trial according to **CPLR 2218** and **CPLR 3212** and wanted to question Debra Shepherd, for the veracity of her affidavit.

The defendants can claim, whatever they want. As long as, I

did not waive my rights, any claims to the contrary are not of any consequence.

24) "Extortion under both the Federal and NewYork law requires "that obtaining of property of another, with his consent, induced either by wrongful use of actual or threatened force, violence or fear, or under color of official right."**[USDC-Decision &Order- P-10\Para 4\Line 3-5]**

It is a fact, that,

1) defendants used the "judicial process" to intimidate me.

2) as a result of their acquiring a judgement by fraud even for a short duration as it was] the defendants acquired "official right" to enforce the judgement.

3) In that process, the defendant's "deprived me the enjoyment and use" of my property and systematically caused damage to my constitutional rights.

4) those are the rights protected by the N. Y. Constitution as well as the U. S. Constitution.

5) the process was "extortionate" in every aspect, since the defendants did not have any right even to try to recover money from me, because they had conducted their business, in violation of laws and had "prosecuted the case" in violation of the laws and constitution.

25) "Congress could not have intended that the mail fraud

statute sweep up correspondence between attorneys, dealing at arm's length on behalf of their parties.." **[USDC-Decision &Order- P-11\Para 2\Line 12-14]**.

I would offer my entire MacCartney Appendix, Brief and Reply Brief, under USCA Docket No. 00-7090; The Reply Brief pages 11 and 12 discuss this, with references to U. S. Supreme Court cases.

In addition to which, I would like to offer the following:

> [L]anguage of the statutes that Congress enacts, provides "the most reliable evidence of its intent". For that reason we typically begin the task of statutory construction by focusing on the words that the drafters have chosen". *Holloway the United States* 526 U.S. 1, 6 [1999]. The Court referred to Justice White's opinion in *United States v. Turkette, 452 US 576,593 (1981).*
>
> Justice Thomas in his dissenting opinion observed, "[i]f the intent of Congress is clear, that is the end of the matter" for the Court. *Cedar Rapids Community School District v. Garret F.* 526 US 66, 80 (1999). *Citing National Credit Union Administration v. First Nat. Bank & Trust Co.; 522 US 479, 499-500 (1998).*

26) "Last, Plaintiff has no standing to complain about alleged misrepresentations made to others, and therefore paragraphs 136 -147 of the Statement of Facts, and the Exhibits associated with them are stricken pursuant to federal FRCP Rule 12(f)."[

USDC-Decision &Order- P-13\Para 2\Line 10-13]

Indeed this "opinion" is absolutely wrong. The evidence presented establishes the "pattern of conduct" of the defendants. This shows that, the defendants were conducting their affairs, in similar manner, over a long period of time and that it was their "usual and customary practice to operate, that way". **This is an integral part of pleading in RICO claims.**

Not only those statements and the exhibits speak louder, in support of my claim but the Exhibits no, P-57 to P-64, even "add a longer time period" to show, that HI defendants had "other counsels, representing them, perpetrate other "misconduct" and I would suggest that, HI benefitted from those litigations and received substantial amount of money.

Besides, the USDC decision, does not even state, the "reason" the portion was stricken. Since the "material and relevant" evidence supports RICO claims, against all defendants, they must be re-instated in their entirety.

Is there any wonder, that, after striking portion of my complaint and before that, by NOT READING or accepting to have read anything properly, the USDC issued it's decision, as we see it ?

27) " Plaintiff does not and cannot plead reliance because all of the alleged "misrepresentations" appeared in legal papers in the course of adversary litigation; they were not statements made by Household upon which plaintiff relied on changes position in reliance there on. "**[USDC-Decision &Order- P-13\Para 3\Line 10-14]**

Based upon the record in this case, the Federal Statutes and

U. S. Supreme Court decision USDC conclusions are **"factually unsupported in the record of this case,** it is **"totally" misleading, is UNTRUE** and corrupts the Court record.

Given the existing US Constitution and the Laws [either State or Federal] in this Jurisdiction, USDC should not have "offered" such protective shield to the attorneys and the HI defendants.

"Reliance" on the misrepresentation is not the issue but the "issue is that of misrepresentations, themselves".

> [I]n the first situation, typified by *Mooney v Holohan*, 294 US 103, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the *prosecution knew, or should have known, of the perjury*. In a series of subsequent cases, the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. It is this line of cases on which the Court of Appeals placed primary reliance. In those cases the Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process. *UNITED STATES v AGURS* 427 US 97, 103-104; [Emphasis added by AK]
>
> **fn7** In Mooney it was alleged that the petitioner's conviction was based on perjured testimony "which was knowingly used by the prosecuting authorities in order to obtain that

conviction, and also that these authorities deliberately suppressed evidence which would have impeached and refuted the testimony thus given against him." 294 US, at 110.The Court held that such allegations, if true, would establish such fundamental unfairness as to justify a collateral attack on petitioner's conviction.

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." Id., at 112,

Fn8 Pyle v Kansas, 317 US 213; Alcorta v Texas, 355 US 28; Napue v Illinois, 360 US 264; Miller v Pate, 386 US ; Giglio v United States, 405 US 150 ; Donnelly v DeChristoforo, 416 US 637.

Fn10 "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 US, at 87 83 S Ct 1194. Although in Mooney the Court had been primarily concerned with the

willful misbehavior of the prosecutor, in Brady the Court focused on the harm to the defendant resulting from non-disclosure. See discussions of this development in Note, The Prosecutor's Constitutional Duty to Reveal Evidence to the Defendant, 74 Yale LJ 136 (1964); and Comment, Brady v Maryland and The Prosecutor's Duty to Disclose, 40 U Chi L Rev 112 (1972).

The above remarks in the *US v Agurs*, supra confirm, that, my claims are supported by the U. S. Supreme Court.

At least Justice Rudolph, **did not consider** that he could accept the 2nd fraudulent affidavit of HI employee Valerie Melvin, **to reaffirm the Judgement** [P-16]. Nevertheless, Justice Rudolph refused to even acknowledge that, defendants R&R and HI had submitted another fraudulent affidavit. That would have created "indelible record" of defendant's misconduct.

This is how the "customs and practices" of the Law Enforcement Officials [at every level... state or Federal] cause "discrimination" towards an ordinary person. Most of the time, the average person does not even realise it nor can he do much about it. Since the attorneys representing the average persons can be "as incompetent" in their "duties" as the "corrupt officials" can be in their "duties"... a "just"resolution always "evades the average person.

That is the reason, I have called that, the enforcement of the laws is carried out by the "enforcers" with basic principle:

1) who will benefit from enforcement

2) who will be affected by the enforcement

3) what effect it will have on the opinion of

the majority in the society

and when it come to the person of the "minority community" ... each of that person is expendable and must be at the "short end of the pole".

Lastly, the **Bradley v Fisher**.... in fact "trounced" the U. S. Constitution, under the guise of the "Common Law Immunity"... but consider the following paragraph, from it:

> [I]f upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, not only would his office be degraded and his usefulness destroyed, *but he would be subjected for his protection to the necessity of preserving a complete record of all the evidence produced before him in every litigated case, and of the authorities cited and arguments presented, in order that he might be able to show to the judge before whom he might be summoned by the losing party--and that judge perhaps one of an inferior jurisdiction--that he had decided as he did with judicial integrity*; and the second judge would be subjected to a similar burden, ...*Bradley v. Fisher*. 80 US 335, 349; [1872]

Bradley opinion makes it very clear, that, "record keeping" was not considered, such an important aspect of Court Administration. It was impossible for the Bradley Court to imagine the present facilities and equipment we have. "Bradley era" could not even dream about them. I have already touched on the issue of the MacCartney case "Court Transcript".

We are still honoring the Common Law Immunity issues, based upon some of the Judgements of that era, to protect a few and to the detriment of millions.

Did the Bradley opinion "instruct" any of the Judges to

"violate and or offend the constitution "?

In fact the earlier comments about Judge's Oath, are as follows and cannot be forgotten.

> [W]hy otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!
>
> [T]he oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as, according to the best of my abilities and understanding agreeably to the constitution and laws of the United States." *Marbury v. Madison.* 1 Cranch 137, 180;

It is my urgent plea to this Court, that:

1) Whoever wrote the decision, in my both cases, failed to or refused to READ my complaints and my submissions in the ensuing motion practice.

2) The sole objectives of the wrongful decisions, have been to discriminate against me.

3) As to what will happen when criminal cases come before USDJ McMahon and those

particularly pursuant to **28 USCS 2254,** etc.

I have raised the "issues, for this appeal" and request this Court to kindly take Judicial Notice of the "Adjudicated cases, the Laws in effect in this Jurisdiction and the Constitution" to review the matter.

Following is from my Petition for Reargument in Second Circuit

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Summary Of Arguments- In Petition for Reargument

1) The Principal Arguments for this " request for rehearing" is the "absolute fact", that, USDC denied "Equal Protection of Laws" in the USDC proceeding to this appellant and "violated my rights" guaranteed by the 5th Amendment of the U. S. Constitution.

2) I presented my claims, in accordance with statutory requirements, the "standard established" by the Unites States Supreme Court; for recovery of damages, I suffered; arising out of multiple frauds, defendants knowingly perpetrated against me; during the1995 & 1996 NY State Court proceedings.

3) The Decision, Order and the Judgement in the Kashelkar v MacCartney matter [CA2NY Docket No. 00-7090] forms the basis of every element, in the Decision, Order and the Judgement issued by the USDC, in this matter. *MacCartney* matter is "intertwined" with this case, in numerous respects.

4) USDC ignored all the proof, I submitted; clearly showing "defendant's misconduct" under the "signatures" of

the Federal defendants and their agents, that is admissible against their interest.

6) In this manner USDC chose to, effectively " protect and immunize all the defendants", by "offensively using it's authority" to dismiss my case, under **FRCP Rule 12 ,** contrary to the mandate of Congress.

7) On account of the above, I have properly raised the issues, relating to the USDC granting "protection to the defendants" contrary to any Statutes or Constitution, under discussions in the matter.

8) In the event this Court, for any reason does not wish to reach a decision, that it "legally" must reach; then this appellant respectfully requests this Court, to "certify" the question, for resolution, by an "En Banc" hearing in this "Court" or "certify" to the United States Supreme Court, for ultimate resolution; in the same manner, as the then 8th Circuit Court Judge, Justice Blackmun did, in **Jones v Alfred H. Meyer Co.** 378 F. 2d 33 [1967]; that was reversed by the USSC under 392 US 409 [1968].

Prepared and submitted by:

Ashok Kashelkar Pro Se
Petitioner
6 Innington Court
Spring Valley NY 10977
Tel (845) 426 2902

Supreme Court
FILED

01 274 AUG 13 2001

OFFICE OF THE CLERK

Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

On Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix F - Conforming to Rule 14.1(i)(vi)

Petitioner - Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
Tel. (845) 426 2902

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Motion Form- dated July 02, 2001 submitted to the Court Of Appeals for the Second Circuits and the Decision of the Court, dated July 12, 2001 1

Petitioner's affidavit, dated July 02, 2001, submitted to the Second Circuit requesting "vacation" of the Mandate 2-3

List Of Exhibits-referred to in the Affidavit-above and their reference, in Appendixes B & C, herein 17

U. S. Post Office Cash Receipt for 03-09-01 19

and the receipt from Kinko-copies made, on March 08, 2001, at 11.32 PM

U. S. Postal Service- Delivery Confirmation Receipt-showing-my depositing mail, on March 09, 2001 20

Copy of the CA2NY envelope-showing Franking Meter Impression for Postage paid-March 12, 2001 21

List of the Counsels for the Respondents

Case No. 1... Ashok Kashelkar v
Harold Y. MacCartney, Jr, et al

MacCartney, MacCartney, Kerrigan &MacCartney,
For Harold Y. MacCartney, Jr and the Firm
13 North Broadway
Nyack, NY 10960
Tel (845) 358 0074

Garcia & Stallone ESQ
For: Debora J. Dillon, William R. Watson;
O'Connor, McGuiness, Conte, Doyle,
Olsen & Collins
135 Pine Lawn Road- Suite 220 N
Melville NY 11747
Tel (631) 249 6644

Attorney General O The State Of New York
Charles F. Sanders. Asst. Atty Gen
For Bruce Muldoon
120 Broadway, New York 10271
Tel (212) 416 8594

Case No. 2 Ashok Kashelkar v Rubin & Rothman, et al

Cahill, Gordon & Reindel
Joseph Gershman
80 Pine Street, New York NY 10005
Tel (212) 701 3000

Statement Of Petitioner

Ashok Kashelkar, petitioner herein, respectfully states, that, the within "unusual nature of record" in The Court Of Appeals, for the Second Circuit throws "substantial light" upon the "peculiar method adopted by the Federal Judges [Courts] and by the staff members, particularly in the Court Of Appeals for the Second Circuit.

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues have been raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 30, 2001

Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. (845) 426 2902

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Number: 00-7090

Ashok Kashelkar
Plaintiff\Appellant
Harold Y. MacCartney, Jr. et al
Defendants\Appellees

UNITED STATES COURT OF APPEALS
Filed July 05, 2001
ROSEANN B. MacKECHNIE, Clerk
SECOND CIRCUIT

Motion for: Vacate \ Stay Mandate

MOTION BY:
Ashok Kashelkar Pro Se
6 Innington Court, Spring Valley NY 10977

OPPOSING COUNSEL:
Please see attached list
Has consent of opposing counsel:

A. been sought? __Yes _x_ No
B . been obtained? __ Yes _x_No
Has service been effected? _x_Yes __ No

Judge or agency whose order is being appealed:
Decision, Order & Judgement of U. S. District Court, SDNY McMahon-J, under appeals and the subsequent decisions/ Orders of this Court.

Brief statement of the relief requested: This motion seeks order to "vacate" the Mandate of March 09, 2001, on account of the fact, it has been issued in violations of FRAP Rules (including Local Rule) and for more important reason, that this appellant is proceeding to file Petition for Certiorari, in the U. S. Supreme Court, on Constitutional Grounds.

Sd _____

By: Ashok Kashelkar

Appearing for: (Name of Party) Pro Se

Appellant _x_ Plaintiff_

Date: July 02, 2001

ORDER

Before: Hon. Amalya L. Kearse, Hon. Pierre N. Leval, Hon. Sonia Sotomayor Circuit Judges

IT IS HEREBY ORDERED that the motion be and it hereby is **DENIED.**

Date: July 12, 2001

UNITED STATES COURT OF APPEALS
Filed
July 12, 2001
ROSEANN B. MacKECHNIE, Clerk

For the Court:

ROSEANN B. MacKECHNIE, Clerk

By: Sd._____

Arthur M. Heller

Administrative Attorney

The following affidavit was submitted, with the preceding Motion Form

---

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT Docket No. 00-7090

----------x

AHSOK KASHELKAR

Plaintiff\Appellant

Affidavit In Support of Motion

-against-

HAROLD Y. MacCARTNEY, JR, et al
Defendants \Respondents

----------x

County Of Rockland: State Of New York

ASHOK KASHELKAR, Plaintiff and Appellant, appearing and proceeding Pro Se, [but not an attorney] in the U. S. Court Of Appeals for the 2nd Circuit deposes and respectfully states as follows:

Objective of this motion is stated in para 1 & 2:

1) VACATE the Mandate of this Court, dated March 09, 2001, being unconstitutional.

2) Stay this Court's Mandate [if this (Court) is not willing to vacate it], dated March 09, 2001; on account of this Appellant's intention to file a petition to the United States Supreme Court, seeking writ of certiorari; on account of substantial constitutional questions. This Court, by it's "decision of May 30, 2001" has refused to accept the Petition for En Banc Hearing and rejected request to certify questions of Law to the U. S. Supreme Court.

BACKGROUND

3) I personally appeared before this Court for the oral arguments on the Appeal and the arguments were heard on November 01, 2001. During the arguments, and in support of the *"issues I raised, in my Appeals"*

to this Court, I openly read in the record of this Court, excerpts from *Hurtado v California* 110 US 526 and *Rochin v California* 342 US 165, referring to the Constitutional limitations on the Power of the Judicial Branch of the Government.

4) None of the Panel Members asked me any questions. At the conclusion of the arguments [from all sides] in this Court, Hon. Amalya Kearse, in the open Court announced that the Court, "reserves it's decision".

5) I received the "Summary Order" dated Nov. 07, 2000, on or about Nov. 09, 2001; affirming the district Court Judgement, substantially for the same reasons as the USDC, except a comment about proper application of "statute of time limitations" for Rico cases. The Summary order fails to discuss any issues "I have raised in my appeals" and also fails to even acknowledge that, I cited the extremely important two cases, limiting the "legal authority" of the Judiciary, decided by the U. S. Supreme Court, referred to in para 4.

6) Observing that the "Summary Order" is devoid of any issues I raised in my appeals and "arguments" I presented in open Court, I decided to file the Petition for Rehearing.

7) In view of the fact, I was leaving for India, as previously planned and could not complete the "Petition for Rehearing" in one day available to me, I requested this Court for extension of time and this Court extended time for me to file Petition for "rehearing", to Dec. 15, 2000,for which I am grateful to this Court. Pursuant to FRAP Rule 40 [that this

Court sent me with the "Summary Order"] , upon my return from India, on Nov. 27, 2000, I prepared and served my "Petition for Reargurnents" on Dec. 15, 2000.

8) Within the "Petition for Reargurnents", on Page 2, I requested this Court to refer the matter:

A: to the " En Banc U. S. Court Of Appeals for the 2nd Circuit",

B or "Certify the question" to the United States Supreme Court , for the purpose of "resolution".

9) In the "Petition for Rehearing" to this Court, I continued to raise issues relating to application of 18 USCS 1621 and 18 USCS 1623, to the Appellant \ defendant, resulting from the "perjuries" perpetrated by Defendant Harold Y. MacCartney, in the District Court proceeding.

10) My Appellate Brief, Reply brief and my "Petition for Rehearing" contains citations of 79 Cases decided by the United States Supreme Court, since 1803 [including Marbury v Madison 1 Cranch 137] and 12 Cases of the 2nd Circuit, in support of my appeal and I offered arguments within the available space, consistent with the limitations placed by the FRAP rules.

11) My timely filed "Petition for Rehearing", has been denied in the name of this Court, on Feb. 09, 2001; without any reasons as well as any "comments" upon my request, either for "certification" of any question

to the Supreme Court, nor about my request, to refer the matter for En Banc hearing. This denial is signed by Administrative Attorney Beth J. Meador. The same is attached as Exhibit..**Mo Ex 01.**

12) Upon receipt of the "denial" [Exhibit Mo. Ex 01] on Feb. 14, 2001; I served a Motion, to enlarge time to serve "Petition for En Banc Hearing", to March 09, 2001; on Feb. 17, 2001. This motion contains my "explicit statement" of my intention to "Request En Banc Hearing". The motion also contains "Good Cause of my request for time to work."

13) I did not receive any response from this Court, to my motion referred to in para 12, before I served my Petition for En Banc Hearing, on March 09, 2001.

Development Of Problems

14) The criteria for requesting "En Banc Hearing" is *that the panel decision conflict's with* **a single decision of the United States Supreme Court.** My appeals contain citations in support of my appeals, from dozens of cases, decided by the U. S. Supreme Court and hence this Court has been "on notice" of the contradictions, vis-a-vis it's decisions with those of the U. S. Supreme Court.

15) Based upon the FRAP Rules, I prepared and served my Petition for En Banc He, upon all parties, on March 09, 2001, **MO Ex 1-A.** Up to that time of my mailing the Petition for En Banc Hearing, I had not received any order of any nature from this Court.

16) On March 14, 2001; I received a decision, in the name

of this Court denying my motion to "enlarge time", that was placed in the mail on March 12, 2001 and but is dated March 09, 2001. This is attached hereto as my Exhibit **MO Ex 02.** This is signed by Administrative Attorney Arthur M. Heller.

17) The facts show, that the Court did not serve the decision [Mo. Ex 02] upon me, till March 12, 2001 by which time, my both petitions WERE received in the Court.

18) Concurrent with this matter, my Appeals under docket No. 00-7751, in this Court, in the matter of Ashok Kashelkar v Rubin & Rothman, et al, has also been pending before another panel of Judges. That appeal was heard in open Court on Dec. 20, 2000.

19) During the arguments, in the Rubin & Rothman matter [00-7751] the Panel Judges [including Hon. Judge Laval;] questioned me about *"basic facts"* and I responded to the questions. The questions "as posed", made it *abundantly clear* to me, that the Panel members were "surprised" to hear my arguments [as if they "did not have any knowledge of the facts of case under appeal"] and convinced me that, they were *"not at all familiar"* with the issues under appeal. I also read excerpts from some cases, decided by the U. S. Supreme Court. In fact Judge Jacob somewhat jovially questioned about, "how to find such money."

20) By it's decision, dated Jan. 02, 2001 the Panel headed by Hon. Judge Jacobs affirmed the District Court judgement. The decision of the panel failed to even acknowledge that

A) I offered any arguments in open Court,

B) that the Panel members asked me questions and that I *answered "panel member's questions"*,

C) in addition to which I read excerpts from some cases, decided by the U. S. Supreme Court and offered extensive comments. In my briefs.

21) On Jan. 15, 2001, I served and filed my Petition for Rehearing, in the 00-7751, matter.

22) Decision dated Feb. 09, 2001, under signature of Beth J. Meador denied my "Petition for Rehearing", in the 00-7751 matter. The denial in 00-7751 is attached as Exhibit **Mo Ex 03.**

23) I filed Motions dated Feb. 17, 2001 [similar to that in para 12 herein] in the Rubin & Rothman matter, to enlarge time to serve a petition for "En Banc Hearing" and contains my "explicit statement" of my intention to "Request En Banc Hearing". The motion also contains "Good Cause of my request for time to work." I did not get any response, from CA2NY regarding "this motion" before I served my Petition for En Banc Hearing, on March 09, 2001.

24) On March 09, 2001, I prepared, served and filed my "Petition for 'En banc Hearing' " on March 09, 2001; in the R&R matter, under docket No. 00-7751.

25) In short, I served and filed my "petitions for En Banc

Hearing" in both the matters on March 09, 2001 [CA2NY Docket Nos. 00-7090 and 00-7751] before I could get any response to my Motions of Feb. 17, 2001. Therefore, my Petition for En Banc Hearing was "timely filed" pursuant to the rules. Applicable rules discussed in *Mo. Ex. 10,* herein.

26) Along with the denial of my Motion in [00-7090] MacCartney matter, I received this Court's mandate, also dated March 09, 2001.

27) On March 16, 2001; I "served and filed" my Motion by U. S. Mail to "Reconsider, Modify or Vacate" the CA2NY "Decision of Denial and it's Mandate" and also requested "stay of enforcement of it's Mandate".

28) On March 24, 2001 I filed a supplemental motion in support of my motion of March 16, 2001. In my motions, I questioned

A) the reasons that the Denial was mailed on March 12, 2001-while it is dated March 09, 2001 and have claimed that, the denial was mailed after this Court received my Petition for En Banc Hearing.

B) Questioned the denial of my motion, that in fact is denial for my right to work-that is my basic right.

C) Questioned the authority for denial of such basic right, etc. I never received any response, from this Court, to my requests for clarifications.

D) And requested, that the "denial of the motion and fact for "my right work to earn living" be made under "authentic signatures" of the Judges of this Court.

29) By it's order of April 06, 2001, this Court granted my motion for leave to file the Petition for rehearing En Banc [in the Rubin & Rothman matter Docket 00-7751] and that it shall be determined by the full Court based on the petition. Copy of the Court order [CA2NY] is attached as **Mo Ex 04**.

30) On April 14, 2001 [that was Saturday], I received a letter from The Office Of The Clerk, CA2NY it's letter, dated April 06, 2001 but mailed on April 10, 2001; returning my "Supplemental Motion" of March 24, 2001; indicating that, *"the case is closed"*. The letter further notified me, that the Court may "impose penalty" for submitting any further papers, to the Court. Copy of the CA2NY letter of the Clerk, under signature of Beth J. Meador, dated April 06, 2001 is attached as **Mo Ex. 05.**

31) "Believing that the CA2NY [clerk's office] was improperly "closing my case", I wrote a letter to the Clerk on April 17, [Tuesday] 2001. Copy attached as **Mo. Ex 06.**

32) Under the signature of Ms. Beth J. Meador, administrative attorney, CA2NY Clerk's office responded, by April 26, 2001 letter. Copy attached as my **Mo. Ex 07.**

33) I wrote to Ms. Beth J. Meador on May 05, 2001 "disagreeing with her interpretations" and questioning

the action to close the file. Copy attached as **Mo. Ex. 08.**

34) CA2NY Clerk's office, under Beth J. Meador's letter of May 07, 2001 responded to my letter of May 05, 2001 and **further informed me that the March 16, 2001 is not filed.** The same is attached as **Mo. Ex 09. This statement is proven false by the " FILED" stamp on Exhibit No. 11.**

35) On May 12, 2001, I wrote another detailed letter, disagreeing with CA2NY Clerk's office and it is attache as **Mo. Ex. 10.**

36) I have not received any explanation, from CA2NY clerk's office.

37) On May 18, I received an Order of the Court, in the Rubin & Rothman matter [Docket No. 00-7751] declining my request, for En Banc hearing, for the stated reasons. Same is attached as **Mo. Ex. 11.**

38) I "treat the Form Letter with faded print- as the RESPONSE, FROM THE CLERK'S OFFICE" to my letter of May 12, 2001 **as the " CLERK'S FINAL ANSWER" and retaliation, for my writing letters, to the Clerk's office.**

39) Now, I have received another denial, dated May 30, 2001; under signature of Beth J. Meador, in the name of the Court, denying my Motion of March 16, 2001. The same is attached as **Mo. Ex.12.**

40) Still there is no "reason offered" for denying my motion.

41) Exhibit Mo. Ex.12 shows that, my Motion was received and filed in the Court on March 19, 2001 and therefore the statements of Beth J. Meador to the effect that :

1) my file is closed [Mo. Ex. 05] and

2) that the March 16, 2001 motion " is not filed" in [Mo. Ex.09]

are not just inaccurate but are totally false, deceptive, misleading and knowingly "so" made, to deny constitutional justice to me. The statements of Ms. Meador are in violation of Oath Of Office, offensive to the Constitution and *"in effect"* deny me Due Process Of Law, guaranteed under the Fifth Amendment of the U. S. Constitution.

42) This appellant is proceeding to file Petition to the United States Supreme Court, for necessary relief, on Constitutional grounds.

43) Now, the defendants MacCartney, et al have demanded that I pay them the "amount the Mandated" to them. The letter is attached as **Mo. Ex 13.**

44) The Mandate is in violation of Local Rule 41(1), since this case was **NEVER decided in "Open Court"** either by a Jury in District Court, nor by a "Bench Trial" in the District Court, nor a Decision was "announced by this Court, in Open Court, at any time.

45) My letters to Beth J. Meador Mo. Ex 06, Mo. Ex 08, Mo. Ex 10 offer some of the arguments, in support of this Motion.

46) I am confident that I will prevail in the United States

Supreme Court-on account of the fact, I will raise the following issues:

A) That I have been discriminated in the Judicial Proceeding in Lower Courts.

B) That the Lower Courts have refused and failed to "enforce" the laws, upon my invoking their jurisdiction.

C) That the Lower Courts have violated the "Congressional Mandate" and have refused to Follow the Decisions of the U. S. Supreme Court.

D) That Common Law cannot "invalidate U. S. Constitution and Laws of United States" and hence Common Law Immunity is Unconstitutional.

E) That the Civil Rights statutes are silent as to the application of " *Time limitations"*-for their violations and to file claims for Civil Damages. Since U. S. Congress never enacted "any time limitations"during the 130 years of passing the first Civil Rights Statutes and that it is proper to borrow from N. Y. State Statutes for defendant's violating my rights by engaging in Frauds and conspiracies, resulting in their violating my rights under the 14th Amendment of The U. S. Constitution. Therefore provisions under NY CPLR 213 must be applied.

F) That RICO *statute* does not limit it's

applications to "Commercial Injury" only in Civil Cases nor RICO statute require violations of *each element of* 18 USCS 1962 (a),(b) and (c) for making a Civil damage claim, under RICO.

G) That interpretations of "Rights and Property" as determined by the U. S. Supreme Court must be applied.

H) Invoke the "Supervisory Power" of the U. S. Supreme Court, on account of the refusal and failure of the Lower Courts, to abide by the principles and procedures laid down by the U. S. Supreme Court.

I) Since only a "Judge" constitutes "lawful judicial authority", why any "decision or order" not signed by the "Judges Of The Court" is to be treated as a constitutional "judicial decision".

WHEREFORE, your deponent, respectfully brings the entire matter to the attention of this Court and request this Court to take notice of the following:

A) The proceeding for your deponent in this Court have turned out to be "meaningless and futile exercise", have been total violation of Due Process Guarantee under the Fifth Amendment of the U. S. Constitution by reason of discrimination and disregard to my case, in violation of the Law Of The Land.

B) The decisions, under the signatures of Beth J. Meador

or others, purported to be in the name of the Judges of this Court are suspect, are without any authority, in violation of several U. S. Statutes, offensive and subversive to (of) the U. S. Constitution.

C) False statements have been made by the employee [who is also an attorney] of this Court [that is part of the U. S. Government] in writing, in violation of 18 USC 1001 and that one or more than one person of this Court's personnel **"responsible to present the papers to the Judicial Authorities [The Judges]"** have failed to present them in timely manner or to present the papers, at all and therefore violated 18 USC 1512.

D) Such highly prejudicial and unauthorized conduct directed towards this litigant, by the employees of this Court is unconstitutional.

E) That the personnel in this Court have conducted themselves beyond their authority, have taken decisions in the name of or under falsely assumed or usurped "Judicial" authority of this Court, [that such persons do not possess], under the constitutional scheme and by "so doing" have tainted and or polluted "jurisprudence" of this Court.

F) That, while this Pro Se litigant has been prosecuting his Civil Litigations, through constitutionally protected process, he has been subjected to unconstitutional, prejudicial and discriminating treatment.

G) Therefore may I respectfully request, that, 1) The mandate be vacated as being in violation of the

Statutes and therefore it is unconstitutional **2)** stay the mandate, since this appellant is proceeding to file his petitions for certiorari to the United States Supreme Court.

H) Such relief was requested on March 16, 2001 but the letters of Beth J. Meador have now offered complete and unequivocal proof of the discrimination, falsification, deception and unconstitutional conduct, that calls for Re-Filing of this request.

I) In view of this presentation, your deponent requests that the Mandate be vacated, without any reservations, whatsoever.

J) Kindly grant such other relief, that the Court deems Prudent, Just and proper and require to dispense under the Constitutional Scheme and authority.

Spring Valley, NY

Date: July 02, 2001

Ashok Kashelkar
Appellant Pro Se
6 Innington Court
Spring Valley NY 10977
Tel: (845) 426 2902

Notary:
Sd_____
Jill Rothbaum
Notary Public State Of New York
No. 44-4757575
Qualified in Rockland County
Commission Expires on March 30, 2002

Following is the List Of Exhibits, attached to the above Motion. Most of the Exhibits, are "reproduced" in Appendixes B & C and their page references in Appendixes are, provided hereunder.

However, the Postal Receipts of my mailing the En Banc Petitions [Mo-Ex-1-A] and CA2NY envelope copy showing the March 12, 2001 [MO-Ex-2], are appended hereafter, for their authenticity and difficulty in acceptable reproduction

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Exhibit List & References

The Page references are to pages in Appendixes "B & C"

MO-Ex 1	Feb. 09, 2001-CA2NY denial of my Timely filed Petition for Panel Rehearing, in MacCartney matter	**B-11**
MO-Ex 1-A	Proof of Mailing [Postal Receipts] Petition for En Banc Hearing, in both the cases [This cannot be reproduced and hence copies are appended hereto]	**Attached**
MO-Ex- 2	March 09, 2001 decision of CA2NY, mailed on March 12, 2001, denying my request, for extension of time to file En Banc Petition, in MacCartney matter	**B-13**
	Copy of the Envelope of CA2NY, showing March 12, 2001 mailing [This was attached, with Motion of May 16, 2001[C-34]	**Attached**
MO-Ex-3	Feb. 09, 2001-CA2NY denial of my Timely filed Petition for Panel Rehearing, in Rubin & Rothman matter	**B-50**
MO-Ex-4	April 06, 2001 CA2NY granting my motion for File En Banc hearing in Rubin & Rothman matter	**B-51**
MO-Ex-5	April 06, 2001 letter, under signature of Beth Meador, returning my March 24, 2001	**C-48**

	motion, without it's filing in the record or submitting to the Court	
MO-Ex-6	My letter to the Clerk's office-dated April 17, 2001	**C-49**
MO-Ex-7	April 26, 2001 letter from Beth Meador	**C-57**
MO-Ex-8	My letter to Beth Meador, dated May 05, 2001	**C-59**
MO-Ex-9	May 07, 2001 letter from Beth Meador	**C- 63**
MO-Ex-10	My letter to Beth Meador, dated May 12, 2001	**C-64**
MO-Ex-11	CA2NY order, dated May 16, 2001; denying my En Banc Petition, under signature of Beth J. Meador	**B-52**
MO-Ex-12	CA2NY order, dated May 31, 2001; denying my March 16, 2001 Motion, under signature of Beth J. Meador	**B-18**
MO-Ex-13	Letter from MacCartneys, demanding the "mandated" amount of $ 405.94, dated June 25, 2001... This letter is not appended, in this appendix but is part of the Motion submitted to CA2NY	

Prepared and submitted by:

Ashok Kashelkar
Appellant Pro Se
6 Innington Court
Spring Valley NY 10977
Tel: (845) 426 2902

UNITED STATES POSTAL SERVICE

***** WELCOME TO *****
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MONSEY, NY 10952-9998
03/09/01 04:17PM

Store USPS Trans 54
Wkstn sys5007 Cashier KM204Z
Cashier's Name FRED
Stock Unit Id WINFRED
PO Phone Number 914-356-3735

1. Priority Mail 3.90
Destination: 11747
Weight: 6.00oz
Postage Type: PVI
Total Cost: 3.90
Base Rate: 3.50
SERVICES
Deliv. Confirmation 0.40
Label#: 03047990000097649683

2. Priority Mail 3.90
Destination: 10271
Weight: 6.00oz
Postage Type: PVI
Total Cost: 3.90
Base Rate: 3.50
SERVICES
Deliv. Confirmation 0.40
Label#: 03047990000097649652

3. Priority Mail 3.90
Destination: 10005
Weight: 6.20oz
Postage Type: PVI
Total Cost: 3.90
Base Rate: 3.50
SERVICES
Deliv. Confirmation 0.40
Label#: 03047990000097649669

4. Priority Mail 3.90
Destination: 10960
Weight: 6.10oz
Postage Type: PVI
Total Cost: 3.90
Base Rate: 3.50
SERVICES
Deliv. Confirmation 0.40
Label#: 03047990000097649676

5. Priority Mail 8.65
Destination: 10007
Weight: 6lb 4.50oz
Postage Type: PVI
Total Cost: 8.65
Base Rate: 8.25
SERVICES
Deliv. Confirmation 0.40
Label#: 03047990000097649645

Subtotal 24.25
Total 24.25

Cash 30.00
Change Due
Cash 5.75

Number of Items Sold: 5

Thank You
Please come again!

Kinko's (845) 735-0143
111 E. Route 59
Nanuet, NY 10954-2911

QTY/LIST	DISC	PRICE	AMOUNT
750 ES B&W S/S WHITE STD			
0.09	0.00	0.09	67.50

SUB 67.50 TX 4.89 TOT 72.39
Visa 72.39
CHG 0.00

XXXXXXXXXXXX4959 08/01 AP046975
I agree to pay the above amount
according to the card issuer agreement.
Sign Here: X_____

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Postage and Delivery Confirmation fees must be paid before mailing.

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Office Of Clerk
United States Court Of Appeals
For The Second Circuit
Foley Square, New York NY 10007

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PS Form 152, March 1999 (See Reverse)

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DELIVERY CONFIRMATION NUMBER: 0304 7990 0000 9764 9669

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Joseph Gershman, ESQ
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